TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 178.

TURRET STEAMSHIPPING COMPANY (LIMITED), CLAIMANT OF THE STEAMSHIP "BARNSTABLE," PETITIONER,

vs.

A. C. HALL ET AL., OWNERS OF THE LATE SCHOONER "FORTUNA," ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 3, 1900.
CERTIORARI AND RETURN FILED JANUARY 30, 1900.

(17,593.)

(17,598.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 484.

TURRET STEAMSHIPPING COMPANY (LIMITED), CLAIMANT OF THE STEAMSHIP "BARNSTABLE," PETITIONER,

vs.

A. G. HALL ET AL., OWNERS OF THE LATE SCHOONER "FORTUNA," ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1897.

No. 249.

THE BARNSTABLE.

TURRET STEAMSHIPPING COMPANY, LIMITED, CLAIMANT OF THE STEAMSHIP BARNSTABLE, APPELLANT,

v.

A. G. HALL ET AL., LATE OWNERS OF THE SCHOONER FORTUNA, LIBELLANTS, ARTHUR W. NUNAN, PETITIONER, HAROLD EMERNAN ET AL., ADMINISTRATORS, ET AL., PETITIONERS, ISAAC B. STEWART, ADMINISTRATOR, PETITIONER, AND BOSTON FRUIT COMPANY, CHARTERER OF THE STEAMSHIP BARNSTABLE, RESPONDENT, APPELLEES.

TRANSCRIPT OF RECORD OF DISTRICT COURT.

[FILED IN CIRCUIT COURT OF APPEALS, APRIL 21, 1898.]

UNITED STATES OF AMERICA,
MASSACHUSETTS DISTRICT, ss.

At a District Court of the United States begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday (being the fifteenth day) of March, in the year of our Lord one thousand eight hundred and ninety-eight.

Before

THE HONORABLE FRANCIS C. LOWELL, *Judge.*

A. G. HALL ET AL., LIBELLANTS,

v.

THE STEAMSHIP BARNSTABLE.

This libel was filed in the clerk's office on the fifteenth day of January, A. D. 1896, and is as follows, viz: —

LIBEL.

DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS. IN ADMIRALTY.

To the Honorable THOMAS L. NELSON, *Judge of the District Court of the United States within and for the District of Massachusetts:*

A. G. Hall, Fred L. Davis and John W. Greenlaw, of Gloucester, District of Massachusetts, late owners of the schooner Fortuna of said Gloucester, in behalf of themselves and her late crew, exhibit this, their libel, against the British steamship Barnstable, now lying in the port of Boston, within the jurisdiction of this Honorable Court, her engines, boats, tackle, apparel and furniture, and against all persons lawfully intervening therein, in a cause of collision, civil and maritime; and thereupon the said libellants allege and articulately propound as follows: —

First. The said schooner Fortuna, owned as aforesaid, was a two-masted schooner of one hundred and eighteen tons register, and on Jan. 13, 1896, the said schooner left Boston bound on a fishing voyage; that she was then tight, staunch and seaworthy, well manned and equipped, and commanded by John W. Greenlaw, an able and experienced master, all of which facts continued until after the collision hereinafter described.

Second. That at sunset on said Jan. 13, the side lights of said schooner were lit and set in regulation lantern boxes in the fore rigging, and the said side lights continued properly set and brightly burning until after the collision hereinafter described.

After 6 P. M., the said schooner Fortuna was running before the wind on the starboard tack and the weather was clear. The said schooner had her four lower sails set and was going through the

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water at the rate of about four knots an hour. Between 6.30 and 7 P. M., while thus proceeding, a proper lookout being stationed forward, a competent man at the wheel and the deck being in charge of the master, the masthead light of a steamer was seen by the man on lookout and duly reported; that said light bore a little forward of the starboard beam of said schooner, and said light appeared to be over a mile distant. Not long afterwards the red light of the steamer bearing said masthead light was seen still bearing on the starboard beam of said schooner; that thereafter said red light was shut out and the green light of said steamer was seen by the man on lookout of said schooner, all of which lights were duly reported by the lookout to the officer in charge of the deck. Suddenly said steamer, which could then be plainly seen, swung to starboard and struck said schooner a little abaft the fore rigging on the starboard side, causing her to at once fill with water and sink, and resulting in the loss of the said schooner and her outfits, the personal effects of her master and crew, and the lives of nine (9) of her crew.

Third. That just before the collision took place, and when a collision was inevitable, the master of said schooner ordered the men at the wheel to put his helm hard-a-starboard, and the schooner swung off a very little to port just as said steamship, which proved to be the said steamship Barnstable, struck the schooner, thus easing the blow a little by causing the angle of the collision to be a little more slanting than it otherwise would, and thereby enabling the majority of the crew to save their lives by climbing over the bow of the Barnstable.

Fourth. That the collision and the damage resulting therefrom were caused wholly by the fault of those on board of the steamer Barnstable and those in charge of her, among other things, —

1. In not keeping clear of a vessel under sail.
2. In not having a proper lookout, and in not seeing and observing the green light of said schooner.
3. In ordering her helm to port when she should have ordered her helm to starboard.
4. In not stopping and reversing.
5. And other faults to be shown at the trial of this cause.

Fifth. That the said schooner Fortuna and those in charge of her

were wholly without fault and did all that could have been done to avoid a collision.

Sixth. That by reason of the aforesaid collision the schooner Fortuna of the value of eleven thousand dollars ($11,000), her outfits and provisions of the value of fifteen hundred dollars ($1500), and the personal effects of the master and crew of the estimated value of four thousand dollars ($4,000), were all lost.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court, and the said steamship Barnstable is now lying in the port of Boston and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, your libellants pray that process in due form of law may issue against said steamship Barnstable, her engines, boats, tackle, apparel and furniture, and that all persons interested therein may be cited to appear and answer oath, and that this Honorable Court may be pleased to pronounce for the aforesaid damages and costs, and for such other and further relief as to justice may appertain, and as this Court is competent to give in the premises.

JOHN W. GREENLAW.

CARVER & BLODGETT, *Proctors.*

COMMONWEALTH OF MASSACHUSETTS,

SUFFOLK, ss. BOSTON, Jan. 15, 1896.

Personally appeared before me John W. Greenlaw, and subscribed to the foregoing libel, and made oath that the same was true to the best of his knowledge and belief.

In witness whereof, I hereunto set my hand and affix my notarial seal the day and year first above written.

[SEAL] ADDISON C. BURNHAM, *Notary Public.*

On the fifteenth day of January, A. D. 1896, the following claim was filed in the clerk's office, viz: —

CLAIM.

And now comes Edward E. Paine, of Boston, Mass., and states that he is the master of the steamship Barnstable, and that as such master he is the agent of the owners and entitled to her possession.

Wherefore, he claims that said steamship, her boats, engines, tackle, apparel and furniture, be at once delivered to him.

EDWARD E. PAINE.

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss. BOSTON, Jan. 15, 1896.

Then personally appeared the above-named Edward E. Paine, and took oath that the statements above subscribed by him are true, before me,

[SEAL] FRANK H. MASON,
Notary Public.

STIPULATION FOR COSTS AND EXPENSES.

On said fifteenth day of January, A. D. 1896, personally appeared Edward E. Paine, of Boston, in the District of Massachusetts, master of said steamship, and as agent of the owners, claimant, and produced for sureties Frank E. Peabody, of Boston, and Robert Winsor, of Weston, both in said district. And the said Paine, Peabody and Winsor, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally, in the sum of two hundred dollars, unto the said libellant, that the said Edward E. Paine should pay all costs and expenses which should be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

STIPULATION TO THE ACTION.

On said fifteenth day of January, A. D. 1896, personally appeared Edward E. Paine, of Boston, in the District of Massachusetts, master of said steamship, and as agent of the owners, claimant, and produced for sureties Frank E. Peabody, of Boston, and Robert Winsor, of Weston, both in said district. And the said Paine, Peabody and Winsor, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally, in the sum of twenty-four thousand eight hundred dollars, unto the said libellants, that the said Edward E. Paine should abide by all orders and decrees, interlocutory or final, of the Court, and should pay the amount of the final decree of the Court, and all sums of money that he should be ordered to pay by the final decree of the Court, whether it be in this or any appellate court.

On the twentieth day of February, A. D. 1896, the following petition was filed in the clerk's office, viz: —

PETITION OF ARTHUR W. NUNAN.

To the Honorable THOMAS L. NELSON, *Judge of the District Court of the United States within and for the District of Massachusetts:*

Arthur W. Nunan, of Gloucester, District of Massachusetts, exhibits this, his petition, to intervene as co-libellant against the steamship Barnstable, her engines, boats, tackle, apparel and furniture, under the libel of A. G. Hall *et al.* against said steamship Barnstable, which was filed in this court on the fifteenth day of January, 1896, to recover damages for the loss of the schooner Fortuna caused by a collison with said steamship Barnstable, in a cause of tort, civil and maritime; and thereupon your said petitioner doth allege and articulately propound as follows: —

First. That by reason of the collision set forth in said libel of A. G. Hall *et al.* against the steamship Barnstable your petitioner was thrown down, and thrown against the side of said schooner and severely injured; that by reason thereof he was struck, bruised and otherwise injured, both externally and internally, and suffered, and still suffers, great pain and anguish, both of body and mind; that by reason thereof your petitioner was confined to the hospital for a long period of time and put to large expense for medicines and doctors; that by reason thereof your petitioner was permanently injured and rendered unable to perform any labor or to earn his livelihood, to the damage of your petitioner in the amount of five thousand dollars ($5,000).

Second. That by reason of the said collision set forth in said libel, your petitioner also lost all his personal effects to the value of one hundred dollars ($100).

Third. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court, and that a sufficient bond was given by the owners of said steamship Barnstable, in said libel of A. G. Hall *et al.*, to cover all damage caused by said collision.

Wherefore, your petitioner prays that he may be allowed to intervene in said libel against said steamship Barnstable, her engines,

boats, tackle, apparel and furniture, and that all persons interested therein may be cited to appear and answer under oath, and that this Honorable Court may be pleased to pronounce for the aforesaid damages and costs, and for such other and further relief as to ustice may appertain, and as this Court is competent to give in the premises.

ARTHUR W. NUNAN.

CARVER & BLODGETT, *Proctors.*

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss. BOSTON, Feb. 19, 1896.

Personally appeared before me, Arthur W. Nunan, and subscribed to the following petition, and made oath that the same was true to the best of his knowledge and belief.

In witness whereof, I hereunto set my hand and affix my notarial seal the day and year first above written.

[SEAL] ADDISON C. BURNHAM,
Notary Public.

This libel was entered at the December Term of this court, A. D. 1895, and thence was continued to the March Term thereof, A. D. 1896, when on the eighth day of April, A. D. 1896, the following affidavit was filed in the clerk's office, viz: —

AFFIDAVIT OF J. PARKER KIRLIN.

J. Parker Kirlin, being duly sworn, says that he is one of proctors for the claimant herein.

The libel herein was filed in the office of the clerk of this court on or about the 15th day of January, 1896, to recover damages for the loss of the schooner Fortuna and her outfit, and the personal effects of her master and crew, in a collision with the steamship Barnstable, which occurred on the 13th of January, 1896.

Afterwards, and on or about Feb. 19, 1896, Arthur W. Nunan filed a petition to intervene as co-libellant, and to recover for personal injuries sustained by him in the collision.

Process under the said original libel was waived, and the vessel being then in the port of Boston, the master of said vessel, E. E. Paine, on or about the 15th day of January, 1896, filed a claim for

said vessel, as bailee thereof, and stipulations for costs and value, by or in behalf of the Turret Steamshipping Company, Limited, were duly filed with sufficient surety in the sum of $25,000.

At the time of the filing of the said libel, and at all the times thereafter, the owner of the said steamship was the Turret Steamshipping Company, Limited, an English corporation. The said steamer, at the time of the collision, was running under a demise charter to the Boston Fruit Company, a corporation, as deponent is informed and believes, organized under the laws of the State of Massachusetts.

By the said charter party it was provided that the steamship should be manned and officered by the charterer, who should pay all wages, and the vessel was manned and officered by the charterer at the time of the collision, and there was no pilot aboard at said time.

The said owner of the Barnstable, the Turret Steamshipping Company, Limited, is about to file a petition under the 59th Rule in Admiralty, praying that the said charterer be brought in as a party that ought to be proceeded against in the present suit for the damage alleged in the libel, for the reason that if there was any negligence on the part of the officers or crew of said Barnstable, which contributed to the collision, it was negligence of the servants of the said chartered owner, and not the servants of the said Turret Steamshipping Company, Limited, the owner of the vessel. As the master of the Barnstable, said E. E. Paine, is the servant of the said party that the owners desire to have brought in as party defendant, it would be inconsistent for him as claimant to present the petition to the Court on behalf of the owners of the ship (*The Beaconsfield*, 158 U. S. 303, 309).

Wherefore the said Turret Steamshipping Company, Limited, as ownership of the steamship, prays to be substituted for and in place of the said E. E. Paine, as claimant of the Barnstable in said causes.

J. P. KIRLIN.

Sworn to before me, this 7th day of April, 1896.

[SEAL] FREDERICK GREEN, *Notary Public*,
New York County.

On said eighth day of April, A. D. 1896, the following Order of Court, with indorsed consent, was filed in the clerk's office, viz: —

ORDER OF COURT.

Upon reading and filing the affidavit of J. Parker Kirlin, verified April 7, 1896, and on the indorsed consent of the proctors for the libellants, and on application for the proctors for the claimant, It is ordered that the Turret Steamshipping Company, Limited, owner of the steamship Barnstable, be and the same hereby is substituted in place of E. E. Paine, master, as claimant herein.

BOSTON, April 8, 1896.

We hereby assent to the above order.

CARVER & BLODGETT,
Proctors for Libellants.

On said eighth day of April, A. D. 1896, the following petition was filed in the clerk's office, viz: —

PETITION OF THE TURRET STEAMSHIPPING COMPANY, LIMITED.

To the Honorable THOMAS L. NELSON, *United States District Judge for the District of Massachusetts:*

The Petition of the Turret Steamshipping Company, Limited, owner and claimant of the steamship Barnstable, in the suit of A. G. Hall, Fred L. Davis and John W. Greenlaw, and of Arthur W. Nunan, co-libellant by intervention, against the said steamship Barnstable, in a cause of collision, civil and maritime, respectfully shows to the Court as follows: —

First. Your petitioner is an English corporation, and at all the times hereinafter mentioned was the sole owner of the steamship Barnstable, her engines, tackle, apparel and furniture.

Second. On or about the fifteenth day of January, 1896, a libel was filed in this court by the said A. G. Hall, Fred L. Davis and John W. Greenlaw, against the said steamship Barnstable, to recover the sum of $11,000 damages alleged to have been sustained by the schooner Fortuna, $1500, the amount of provisions and outfit, alleged to have been lost, and $4,000, the estimated value of the personal

effects of the master and crew of the schooner, claimed to have been lost by reason of a collision between said schooner Fortuna and said steamship Barnstable, on the 13th of January, 1896.

On or about February 19 a petition of intervention was filed by Arthur W. Nunan, praying to be made co-libellant, and to recover against the steamship, her engines, etc., the sum of $5,000 for personal injuries alleged to have been sustained by him in the collision, and the sum of $100 for the alleged loss of his personal effects.

For greater particularity and certainty, a copy of the said libel and a copy of the said petition of intervention are hereto annexed and made a part hereof, and marked "Exhibit A" and "Exhibit B".

Third. On said fifteenth day of January, 1896, your petitioner caused an appearance to be entered, and a claim to be filed for the said steamship, and upon the libellants' demand caused a stipulation for costs in the sum of $200, and a stipulation for value, in the sum of $24,800, to be filed in the office of the clerk of this court, the steamship Barnstable being at the time in the port of Boston, and within the jurisdiction of this Honorable Court, and process of attachment having been waived by consent on condition of your petitioner filing the said stipulations in the amounts stated.

Fourth. Your petitioner alleges that at the time of the said collision on the 13th of January, 1896, its said steamship Barnstable was engaged under a charter, by which she had been hired and demised to the Boston Fruit Company, of Boston, a corporation organized, as your petitioner is informed and believes, under the laws of the State of Massachusetts, and at the time of the collision was bound for Boston, on a voyage for the said Boston Fruit Company, which was being made under and pursuant to the said charter. A copy of said charter party is hereto annexed, marked "Exhibit C", and made a part hereof. Your petitioner is advised and avers that said charter is a charter of demise.

Fifth. The charter party on its face is between R. Craggs & Sons, agents of owners, and said Boston Fruit Company, and is a charter of two steamships which were built by the said R. Craggs & Sons for said charterers, and named Barnstable and Brookline, said Barnstable being the vessel herein proceeded against. Before

the said collision, both of the said steamers had become by purchase the sole property of your petitioner, and said charter party had been assigned and transferred to it, and said charterer had attorned to your petitioner, and for a considerable period had been paying the agreed hire stipulated in said charter to be paid for the hire and use of the said vessel unto your petitioner.

Sixth. It was by the said charter party, amongst other things, provided as follows:—

"2. The charterers shall provide and pay for all oils and stores for the vessel, gear, tackle and appliances for loading and discharging the cargo, and for all the wages and provisions of the captain, officers, engineers, firemen and crew, who, excepting the guaranty engineer, shall be appointed by them. The owners shall appoint chief engineer for six months, their pay not to exceed that paid by the charterers in similar vessels."

Your petitioner alleges that the period of six months during which the owners had authority to appoint a guaranty engineer had expired before the said collision, and at the time of the said collision the master and all of the officers, engineers, firemen and crew were in the service and employment and under pay of the said chartered owner. It further alleges that the entire possession and control of the said vessel was, by the said charter party, vested in and transferred to said chartered owner for the period of the charter, and that your petitioner was not in possession or control of the said vessel at the time of the said collision, nor had it any agent or servant on board thereof.

Seventh. As your petitioner had no agent, officer or servant on board said vessel at the time of the collision, it has no knowledge or information of the facts and circumstances in connection with the said collision, except such as is derived from statements made to its legal representatives by the officers and crew of the said vessel, and by certain passengers who were on deck at the time of the collision. On the information thus acquired, your petitioner avers that the said collision was due to the fault or neglect of those in charge of the said schooner Fortuna, in omitting to show to the steamer the lights required by the regulations to prevent collisions at sea and in inland waters, and particularly in that the side lights, one or both of which

should have been burning and visible, for some time before the collision, to those on deck of the Barnstable, were not so visible for some reason unknown to your petitioner. It avers that the collision was further contributed to by the neglect and default of the schooner, in that she did not maintain a proper lookout or watch on deck, in charge of a competent and vigilant officer, and did not seasonably display a torch, as required by law. The said schooner was in fault in other respects, as will more fully appear upon the trial. Although the Barnstable, as your petitioner is informed and believes, was seaworthy and in all respects properly manned, outfitted and equipped at the time, and had a competent watch on deck, her master, an officer and wheelman being upon the bridge, and an able seaman stationed forward on the forecastle head, acting as lookout, all vigilant and attentive to their duties, those on board the Barnstable made out the loom of the Fortuna before any of her lights was visible to them. The vessels being at this time so close together that it was impossible for the Barnstable to stop her way in time to avoid the Fortuna, the helm was hard-ported in an effort to clear her or ease the blow, but, notwithstanding this manœuvre, the vessels were in collision, with the result that the Fortuna rapidly filled with water and sank after a short interval. Upon information and belief, therefore, your petitioner alleges that the said collision was solely due to the fault or neglect of those on board the Fortuna, and was not caused or contributed to by the fault or neglect of those in charge of the said Barnstable. Nevertheless, your petitioner further avers that said Barnstable is now being proceeded against under the said libel and said petition of intervention, upon a charge or charges of negligence on the part of those in charge of her at the time of the collision, and as the persons thus charged with fault were the agents and servants of said Boston Fruit Company, your petitioner presents this its petition, praying that said charterer may be brought in as a party under the 95th Rule in Admiralty, and may be proceeded against in the same suit, for such damages, for the reason that if said collision was caused or contributed to by any fault on the part of those in charge of the Barnstable, such fault is ascribable to said Boston Fruit Company and its servants, and not to said vessel herself, nor to your petitioner, as the owner thereof.

Eighth. The time of your petitioner to answer the libel has not expired, and said Boston Fruit Company has its principal place of business in the city of Boston, within the jurisdiction of this Honorable Court, where, as your petitioner is informed and believes, its officers reside and said company carries on its main business.

Ninth. Your petitioner avers that the said Boston Fruit Company ought to be proceeded against in the same suit with the said Barnstable, for the said damage.

Tenth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, your petitioner prays that process may issue against the said Boston Fruit Company, citing it to appear and answer the libel and the petition of intervention herein, as well as this petition, and that said Boston Fruit Company may be proceeded against in the same suit for such damages; and that if fault be found on the part of those in charge of the said Barnstable, said Boston Fruit Company may be condemned to answer and pay the said damage, or that this court will otherwise administer right and justice in the premises, between all the parties.

CONVERS & KIRLIN,
Proctors for Petitioner.

SOUTHERN DISTRICT OF NEW YORK,
CITY, COUNTY AND STATE OF NEW YORK, ss.

E. B. Convers, being duly sworn, says that he is one of the proctors for the petitioner herein, and that the foregoing petition is true according to his knowledge, information and belief. He further says that the reason why this petition is not signed by the petitioner, or one of its officers, is that the petitioner is a foreign corporation, and all of its officers are absent from the United States.

E. B. CONVERS.

Sworn to before me this seventh day of April, 1896.
[SEAL] FREDERICK GREEN,
Notary Public, New York County.

[N. B. The libel and petition referred to in the foregoing petition, as annexed thereto, marked "Exhibit A" and "Exhibit B", are here omitted, as they have already been made a part of the record.]

EXHIBIT C.

[COPY]

W. W. HURLBUT & Co.,
135 *Pearl Street*,
New York.

Cable Address,
"Dogbastian."
Watkins Code.
Scotts Code,
Telephone, "John 142."

TIME CHARTER.

NEW YORK, March 10, 1893.

IT IS THIS DAY MUTUALLY AGREED, between Messrs. R. Craggs & Sons, Agents of Owners of the two (2) good Screw Steamships to be built and called the (to be named by charterers) of the port of Stockton-on-Tees, of . . . . . Tons gross Register, and . . . . . Tons net register . . . . . horses power, provided with steam winches, spare propellor, spare Crank, and spare tail shaft and U. S. Certificate for 24 first class cabin passengers and Messrs. Boston Fruit Co. of Boston, U. S. A., Charterers as follows, viz.:

1. The said Owners agree and the said Charterers agree to hire the said Steamship for the term of 36 calendar months (or, in Charterers option, until the completion of any voyage commenced at any time before, but not completed until after the expiry of the said 36 months) commencing on the 1st to 15th day of March, 1894, she then being placed at the disposal of the Charterers, in their loading berth, in the port of Port Antonio Ja at such wharf or place (where she may always safely lie afloat) as the Charterers may direct, she being then tight, staunch, strong, her bottom newly painted, and every way fitted for the service; to be employed in any lawful trades between Central America and or North and or South America and or West Indies (not north of River St. Lawrence nor south of River Platte) in any order, as the Charterers of their Agents shall direct. River St. Lawrence debarred between Oct. 1st and May 1st.

2. The Charterers shall provide and pay for all oils and stores for the vessel, gear, tackle and appliances for loading and discharging the cargo, and for all the provisions and wages of the Captain, Officers, Engineers, Firemen and Crew who, excepting the guarantee Engineer, shall be appointed by them. The Owners shall appoint Chief Engineer for 6 months only, their pay not to exceed that paid by the Charterers in similar vessels. The owners shall maintain the vessel in a thoroughly efficient state in hull and machinery for the service, including winches with chain gear and donkey boiler.

3. The Charterers shall also provide and pay for all the coals and fuel, port charges, pilotages, agencies, commissions, and all other charges whatsoever, excepting for painting and repairs to hull and machinery, and anything appertaining to keeping the ship in proper working order. Such repairs as far as possible, and as is usual in such cases, to be done on board by the steamer's staff.

4. The Charterers shall pay for the use and hire of the said vessels at the rate of Five hundred and fifty pounds Br. Sterling (£550) each per calendar month, and at and after the same rate for any part of a month, the hire to continue from the time specified for terminating the charter until her delivery to the Owner (unless lost), at the port of in the U. S. A. North of Hatteras. Payment whereof shall be made in cash at New York semi-monthly in advance at the rate $4.85 per pound Br. Stlg., and in default of such payment or payments as herein are specified the Owners shall have the right of withdrawing the said steamer from the service of the Charterers, without prejudice to any claim the Owners may otherwise have on the Charterers in pursuance of this Charter.

5. That the cargoes shall be laden and/or discharged in any dock, or at any wharf or place that Charterers may direct where she can always safely lie afloat.

6. That the whole reach, burthen and passenger accommodation of the ship (not being more than she can reasonably stow and carry) shall be at the Charterers disposal, reserving only proper and sufficient space for ship's officers, crew, tackle, apparel, furniture, provisions and stores. Cargo and/or coals and/or cattle may be taken on deck at the Charterers risk so far as the same do not endanger the safety of the vessel.

7. The expense of loading and discharging shall be borne by the Charterers, the stowage shall be under the control of the Master, and the Charterers shall be responsible for the same. Ballast and Dunnage as required shall be found by Charterers. Sufficient cellular water ballast to be provided by owners, as per plan.

8. An inventory of plated ware, crockery, linen and all other fittings shall be taken at the commencement of this Charter. Anything lost or broken or afterwards required, to be replaced or provided by charterers. Fair wear and tear excepted.

9. The vessel shall be put into dry dock to have bottom cleaned and painted, if required by Charterers at owners expense every six months. Time so occupied shall not be paid for by Charterers.

10. The Master shall be under the orders and directions of the Charterers as regards employment, agency, or other arrangements; and the Charterers hereby agree to idemnify the owners from all consequences or liabilities that may arise from the Master signing Bills of Lading, by their orders, or those of their agents, or in otherwise complying with same. The master although appointed by Charterers to be satisfactory to the owners.

11. If the Charterers shall have reason to be dissatisfied with the conduct of the chief engineer during first 6 months, the owner shall on receiving particulars of the complaint, investigate the same, and if called upon, make a change in the appointments when the steamer is in. Owners have same privilege as regards Captain and officers and Engineers during continuance of charter.

12. [*Deleted.*]

13. That should vessel be lost, any hire paid in advance and not earned (reckoning from the date of her loss), shall be returned to the Charterers, with interest from date of loss.

14. That the Charterers shall have the option at any time during this Charter of purchasing the said vessel for the sum of £23000, owners agreeing to allow at the rate of 5% depreciation per year after the first twelve months.

15. That should any dispute arise between the Owners and the Charterers, the matters in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen, their decision, or any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of Court.

16. That the Owners shall have a lien upon all cargoes, and all sub-freights, for freight or charter money due under this Charter, and Charterers to have a lien on the ship for all moneys paid in advance and not earned.

17. In the event of loss of time from collision, stranding, want of repairs, break down of machinery, or any cause appertaining to the duties of the Owner preventing the working of the vessel for more than twenty-four working hours, the payment of hire shall cease from the hour when detention begins until she be again in an efficient state to resume her service. Further, if in consequence of such deficiency, collision, want of repairs, break down or other causes, the vessel should put into any port or ports other than those to which she is bound, port charges, pilotages, and other expenses at those ports, shall be borne by the Owners; but should the vessel be driven into port or to anchorage by stress of weather, such detention or loss of time shall fall on the Charterers. It is understood in the event of steamer from above causes putting into any port or ports other than those to which she is bound that the charterers are covered as to expenses as the owners are by their insurance.

18. It is understood that the Bills of Lading used by the Charterers shall contain the usual "Neligence" cause.

19. The Charterers shall pay the Owners the current local price for any coals left in the steamers bunkers, and the Owners in like manner shall pay the Charterers the current local price for any coals remaining on board on completion of the present Charter.

20. United States Passenger Certificate for 24 passengers (first class) to be furnished by Owners. And passenger accomodation for 24 first class cabin passengers on the upper deck fitted in first class manner, with all napery, crockery, etc., usual for first class West Indian service.

21. [*Deleted.*]

22. That the Owners shall pay for the insurance on the vessel.

23. The benefit of all derelicts and salvages, as well as the los

of time and other expenses attendant thereon, to be for account of Owners and Charterers equally. Penalty for non-performance of this Contract, estimated damages.

24. An address commission of 2 1/2% on the amount of this Charter is payable by Owners to Charterers' agents.

25. Commission of five per cent. on the estimated amount of Freight is due and payable by Owners, on signment hereof to W. W. Hurlbut & Co., New York, Ship lost or not lost, as also on any extension or renewal of this Charter or purchase of vessel.

26. It is understood that Charterers' Captain joins at Middlesbro' and that the crew there shipped shall form the first complement.

Signed by
(*Signed*) R. CRAGGS & SONS.

In the presence of
(*Signed*) W. H. JOHNSON.

Signed by
(*Signed*) BOSTON FRUIT CO.,
A. W. PRESTON,
Manager.

In the presence of
(*Signed*) I. C. YOUNG.

We certify the above to be a true copy of the original Charter Party in our possession.

(Signed) BENNETT, WALSH & Co., *Brokers.*

(*Indorsed on Charter Party.*)

A. It is understood this charter is for two steamers to be built to meet the following requirements and charterers agree to accept same without further alteration.

B. Length about 230 feet B P (or say 240 feet overall), Breadth 31 feet 6 inches, and 24 feet 3 inches moulded depth. Lower hold to be 13 to 14 feet in depth and beams for fruit decks laid throughout holds and between decks of 7 feet clear.

C. Triple expansion engines of not less than 22″, 35″, 57″ and 36″ stroke with two large boilers of 14 feet diameter and 10′ 3″. Sufficient steam to drive the ship an average speed of 13 knots in ordinary weather with good coals while fruit laden.

D. Steamer to be on Cellular Bottom Principle. To have four side ports, to have 12 ventilators of twenty to 24 inches diameter. To have steam pipes in holds and tween decks reasonably satisfactory to charterers in order to prevent fruit from chilling in Winter. Awnings fore and aft. Ice house to hold 15 tons of ice. Permanent bunkers and cross bunkers provided to carry coal enough to steam 3500 miles.

E. General arrangement of steamers to be in accordance with plans and model furnished by owners. It being understood each steamer is to be at least 72500 cubic feet capacity for cargo including cross bunkers and at least 950 to 1000 tons Deadweight. Owners

to furnish electric lights and to arrange plans of cabins, position of side ports and details, specifications, &c. mutually with charterers.

F. Charterers to have option of naming these steamers.

G. Owners agree to have the first S. S. built and ready for sea in time for delivery at Port Antonio by March 1st 1894, and second steamer built and ready for sea by March 10th 1894, unless said delivery be prevented by riots, strikes and other causes over which the builders have no control.

SUMMONS.

Thereupon, on said eighth day of April, A. D. 1896, by order of the judge, a summons issued, commanding the marshal to summons the said Boston Fruit Company, a corporation duly established under the laws of the Commonwealth of Massachusetts, having a place of business at Boston (if it might be found in his precinct), to appear before the District Court of the United States, to be holden at Boston, within and for the Massachusetts District, on Friday, the seventeenth day of April current, at ten o'clock, A. M., then and there to answer to the foregoing petition.

And to make return of his doings into court.

And the marshal made return as follows, viz.:

UNITED STATES OF AMERICA,
MASSACHUSETTS DISTRICT, ss. BOSTON, April 8, 1896.

Pursuant hereunto, I have this day summoned the within named Boston Fruit Company to appear before the District Court of the United States, as within directed, by giving to Charles W. Sweet, Treasurer of said Company, a true and attested copy of this writ in hand at Boston.

F. X. MACDONALD, *Deputy U. S. Marshal.*

STIPULATION FOR COSTS AND EXPENSES.

On said eighth day of April, A. D. 1896, then appeared the Turret Steamshipping Company, Limited, a corporation established under the laws of the United Kingdom of Great Britain and Ireland, claimant of said steamship Barnstable, and produced for surety The City Trust, Safe Deposit and Surety Company of Philadelphia, incorporated under the laws of the State of Pennsylvania, having a place of business at Boston in said District. And the said parties submitting themselves to the jurisdiction of this Court, bound themselves, their heirs, executors and administrators, successors and

assigns, jointly and severally, in the sum of two hundred dollars, unto the Boston Fruit Company, a corporation duly established under the laws of the Commonwealth of Massachusetts, that the said Turret Steamshipping Company, Limited, should pay all costs and expenses which should be awarded against it in this suit, in favor of the Boston Fruit Company, aforesaid, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

From said March Term, this libel was continued from term to term to the September Term thereof, A. D. 1896, when on the second day of November, A. D. 1896, the following petition was filed in the clerk's office, viz: —

PETITION OF HAROLD EMERNAN ET AL.

To the Honorable THOMAS L. NELSON, *Judge of the District Court of the United States, within and for the District of Massachusetts:*

And now come Harold Emernan and James M. Anderson, both of Lunenburg, Nova Scotia, as administrators of the estate of Harvey Emernan, late of said Lunenburg; Levi Menac, of Port Medway, Nova Scotia, as administrator of the estate Crawford Menac, late of said Port Medway; Minnie A. Ackerman, of Boston, District of Massachusetts, as administratrix of the estate of William Ackerman, late of said Boston; Joseph Clark, of Cambridge, District of Massachusetts, as administrator of the estate of John Clark, late of said Boston; Lillian M. Childs, of Gloucester, District of Massachusetts, as administratrix of the estate of Robert W. Childs, late of said Gloucester, and Richard Tobin, of said Gloucester, as administrator of the estate of William Tobin, late of said Boston, and ask to intervene as libellants in the libel of Hall *et al. v.* steamship Barnstable, No. 760, in the United States District Court for the District of Massachusetts, and thereupon the said petitioners allege and articulately propound as follows:

First. That said William Tobin, Robert W. Childs, John Clark, William Ackerman, Harvey Emernan and Crawford Menac were members of the crew of the late schooner Fortuna.

Second. That said Harold Emernan and James M. Anderson allege that by reason of said collision, and resulting therefrom, the said Harvey Emernan, of said Lunenburg, lost personal effects to the

amount of two hundred and fifty dollars ($250), and suffered injuries which resulted in his death, and that he should recover for pain and suffering resulting in his death, and for his death, the sum of three hundred and fifty dollars ($350).

Third. And said Levi Menac doth allege that by reason of said collision, and resulting therefrom, the said Crawford Menac, of said Port Medway, lost personal effects to the amount of two hundred and fifty dollars ($250), and suffered injuries which resulted in his death, and that he should recover for the pain and suffering resulting in his death, and for his death, the sum of three hundred and fifty dollars ($350).

Fourth. And said Minnie A. Ackerman doth allege that by reason of said collision, and resulting therefrom, the said William Ackerman of said Boston lost personal effect to the amount of two hundred and fifty ($250), and suffered injuries which resulted in his death, and that he should recover from the pain and suffering resulting in his death, and for his death, the sum of three hundred and fifty dollars ($350).

Fifth. And said Joseph Clark doth allege that by reason of said collision, and resulting therefrom, the said John Clark of said Boston, lost personal effects to the amount of two hundred and fifty dollars ($250), and suffered injuries which resulted in his death, and that he should recover for pain suffering resulting in his death, and for his death, the sum of three hundred and fifty dollars ($350).

Sixth. And said Lillian M. Childs doth allege that by reason of said collison, and resulting therefrom, the said Robert W. Childs, of said Boston, lost personal effects to the amount of two hundred and fifty dollars ($250), and suffered injuries which resulted in his death, and that he should recover for the pain and suffering resulting in his death, and for his death, the sum of three hundred and fifty dollars ($350).

Seventh. And said Richard Tobin doth allege that by reason of said collison, and resulting therefrom, the said William Tobin, of Boston, lost personal effects to the amount of two hundred and fifty dollars ($250), and suffered injuries which resulted in his death, and that he should recover for the pain and suffering resulting in his death, and for his death, the sum of three hundred and fifty dollars ($350).

Eighth. And said petitioners do further allege that the said collison was caused in the manner as stated in said libel, and that said steamship Barnstable was wholly at fault therefor.

Ninth. And said petitioners do further allege that the Turret Steamshipping Company, Limited, appeared in the above libel and claimed said steamship Barnstable and gave bond to release her, and said claimant filed a petition to bring in as a party respondent the Boston Fruit Company, alleging that it was the charterer of said steamship Barnstable, and in sole charge and control of her at the time of the collision.

And said petitioners therefore pray that said Boston Fruit Company shall be made a party respondent to this petition, and also in the original libel and intervening petition already on file, and that it shall be summoned to appear and answer to said libel and petitions and to answer to any decree that may be rendered against it in behalf of said libellants or either of said petitioners.

Tenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

And your petitioners further pray that they may thus become parties to said libel by intervention, and that said libel may be so amended as to include them as libellants therein, and so as to include the Boston Fruit Company as a party respondent in said libel and said petitions, and that the stipulations given in said libel may be extended to cover the claims contained in this petition, and that a warrant may issue to the stipulators therein to show cause, if any, why said stipulations should not be so extended.

HAROLD EMERNAN,

by ADDISON C. BURNHAM, *his Attorney.*

CARVER & BLODGETT, *Proctors.*

COMMONWEALTH OF MASSACHUSETTS,

SUFFOLK, ss. BOSTON, Nov. 2, 1896.

Then personally appeared Addison C. Burnham, in behalf of said petitioners, and took oath that the above stated facts are true to the best of his knowledge and belief.

In witness whereof, I hereunto set my hand and notarial seal, on the day and year first above written.

[SEAL] STEPHEN R. JONES, *Notary Public.*

SUMMONS.

Thereupon, on said second day of November, A. D. 1896, by order of the judge, a summons issued, commanding the marshal to summons the said Boston Fruit Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts, having a usual place of business at Boston in said district (if it might be found in his precinct), to appear before the District Court of the United States, to be holden at Boston, within and for the Massachusetts District, on the sixth day of November current, at ten o'clock, A. M., then and there to answer to a libel and intervening petitions. And to make due return of his doings into Court.

ACKNOWLEDGMENT OF SERVICE.

BOSTON, Nov. 2, 1896.

Service of the within is hereby accepted as legal and sufficient by the Boston Fruit Company.

BOSTON FRUIT COMPANY,
by its Proctors,
RUSSELL & RUSSELL.

On the sixth day of November, A. D. 1896, the following answer was filed in the clerk's office, viz: —

ANSWER OF TURRET STEAMSHIPPING COMPANY, LIMITED.

To Honorable THOMAS L. NELSON, *Judge of said Court:*

The Answer of the Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, her machinery, tackle, apparel and furniture, to the libel of A. G. Hall *et al.*, and Arthur W. Nunan, against said steamship.

And not waiving the petition filed by said claimant in the above cause, and the claim that the Boston Fruit Company should be made party defendant and decreed to pay any and all damages, if any, for the losses and matters alleged in the libel, the claimant articulately answers the libel as follows:

First. The claimant is ignorant of the allegations in the first article of the libel, and leaves and will require the libellants to prove the same, if material.

Second. The claimant admits that a collision occurred sometime after seven o'clock in the evening of Jan. 13, 1896, between the fishing schooner Fortuna and the steamship Barnstable, and it denies all the other allegations in the second article of the libel, except as herein expressly admitted. And it alleges the circumstances of the collision to have been as follows: —

The night was dark but clear. The wind was about west northwest. The steamship was on a voyage from Port Antonio, Jamaica, to Boston with a cargo of fruit. She was back of Cape Cod off Highland Light, and proceeding on her course northwest by north: her proper lights were set and burning. The master and second mate had been on duty since six o'clock, P. M., and were on the bridge keeping a careful lookout and attentive to duty. A competent and vigilant lookout was properly stationed forward and attending to his duty, and a proper and efficient man was at the wheel. While so proceeding, and [illegible] every precaution and diligence to see and avoid approaching vessels, a green light on what afterwards proved to be the schooner Fortuna suddenly appeared off the port bow in close and dangerous proximity. The master of the steamship, to avoid the collision, if possible, or to ease the blow, immediately ordered the wheel put hard-a-port, and the order was immediately obeyed. He also signalled to stop the engine and the engine was stopped, but it was too late to avoid the collision. Almost immediately after the light was seen, the collision occurred, the steamship striking the schooner on the starboard a little aft of the foremast, glancing forward, and cutting into her. The schooner swung alongside, the engines were reversed, and some of the men from the schooner jumped on board the steamship. The schooner soon afterwards filled and sank and some of her men were lost. The steamship was not damaged.

Third. The claimant admits that the schooner put her wheel hard-a-starboard before the collision and swung to port, and the claimant alleges that if said schooner had kept her course, as by law required, or changed to starboard, the collision might have been avoided.

Fourth. The claimant denies the allegations in the fourth article of the libel, and on the contrary alleges that the collision was caused wholly by the fault of those in charge of said schooner, among other things:

1. In not having or showing the lights required by law, and especially in not having and showing seasonably a proper green light to the steamship as the vessels were approaching.

2. In not having and keeping a proper lookout and a proper and efficient officer on deck and in command.

3. In changing her course, as the vessels were approaching, by putting the wheel hard-a-starboard, and swinging to port.

4. In not displaying a torch or flare-up or other signal to the steamship as the vessels were approaching.

Fifth. The claimant denies the allegations in the fifth article of the libel, and on the contrary alleges that the collision was caused entirely by the fault and negligence of the schooner and those in charge of her. And said collision was not caused or contributed to in any degree by said steamship or those in charge of her navigation.

Sixth. The claimant is ignorant of the allegations in the sixth article of the libel, and in first and second articles of the intervening libel of Arthur W. Nunan, and it denies all said allegations, and it denies that said schooner was of the value of $11,000, or that her profits and provisions were of the value of $1,500, or that the personal effects of the master and crew were of the value of $4,000, or that all of them were lost. And it denies that said Nunan was injured or damaged to the amount of $5,000, or that he lost personal effects of the value of $100; and it will require the libellants to prove their damage if it becomes material.

Seventh. Further answering the said libel, and as a further and separate defence, the claimant refers to and here repeats the matters stated in said petition, praying that the Boston Fruit Company be made party defendant, and decreed to pay all damages, if any, for the losses and matters alleged in the libel, with the same force and effect as though here more particularly set forth.

Eighth. All and singular the premises are true.

Wherefore, the claimant prays that the libel may be dismissed with costs, or that the Court will make such other or different decree

as the justice of the cause presented herein, and under the said petition and answer thereto, may require.

CONVERS & KIRLIN,
Proctors for Claimant,
5 Beekman Street, New York.

SOUTHERN DISTRICT OF NEW YORK,
CITY AND COUNTY OF NEW YORK, ss.

E. B. CONVERS, being duly sworn, says that he is one of the proctors for the claimant herein, and that the foregoing answer is true according to his information and belief. He further says that the claimant is a foreign corporation, and all of its officers are absent from the United States.

E. B. CONVERS.

Sworn to before me this third day of August, 1896.
[SEAL] WILLIS B. DOWD,
Notary Public, New York County.

On said sixth day of November, A. D. 1896, the following answer was filed in the clerk's office, viz: —

ANSWER OF BOSTON FRUIT COMPANY TO PETITION OF TURRET STEAMSHIPPING COMPANY, LIMITED.

To Honorable THOMAS L. NELSON, *Judge of said Court:*

The answer of the Boston Fruit Company, a corporation duly established by law of the Commonwealth of Massachusetts, and located in Boston, in said District, to the petition of the Turret Steamshipping Company, Limited.

The said Boston Fruit Company articulately answers as follows:

First. It is a corporation duly established by law and located in Boston, in said Commonwealth and District of Massachusetts.

Second. It admits the allegations in the first, second and third articles of the petition.

Third. In answer to the fourth article of the petition the said Boston Fruit Company admits that it made and executed with R. Craggs & Sons, agents of owners, March 10, 1893, charter party or agreement, a copy of which is annexed to the petition marked "Exhibit C", in and by which it chartered two steamships for the

time and upon the terms and agreements provided in said charter party and it refers to said charter party for such terms and agreements. It admits that said steamship Barnstable was one of the two steamships referred to in said charter party, and at the time of said collison was, under said charter party, bound from Port Antonio, Jamaica, to Boston with fruit for said Boston Fruit Company.

Fourth. The Boston Fruit Company admits that the petitioner before the said collision had become the owner of said steamship and had acquired by assignment all the rights and interests of owner in said charter party, and had assumed all the liabilities and agreements therein provided, and said Boston Fruit Company had paid the agreed charter money to the petitioner and had recognized it as the assignee of said charter party, and the petitioner was bound by the terms and agreements therein.

Fifth. In answer to the sixth article of the petition, the Boston Fruit Company admits that said charter party contained Clause 2 as alleged, but it denies that the petitioner at the time of the collision was not in legal effect in possession or control of said steamship and had no agent or servant on board thereof; and on the contrary, the Boston Fruit Company alleges that by the terms and agreements in said charter party it was to pay the wages and provisions of the captain, officers, engineers, firemen and crew, their pay not to exceed that paid by the charterers in similar vessels; that the master, although appointed by charterers, was to be satisfactory to the owners; that the owners alone were, if called upon, to investigate charges made by charterers against the chief engineer, captain, officers and engineers, and alone could make a change in the appointments during the continuance of the charter party; that for any loss of time from collision, the payment of hire shall cease during such loss; that the owners should maintain the vessel in a thoroughly efficient state in hull and machinery for the service; that the owners shall pay for the insurance on the vessel, and the benefit of all derelicts and salvages as well as the loss of time and other expenses attendant thereon should be for account of owners and charterers equally. And the Boston Fruit Company alleges that by these and other terms and provisions in said charter party, the said company

did not assume liability or become liable for damage done by collision by said steamship, and that said steamship alone was liable therefor in a proceeding *in rem*, and it denies that it is liable for the acts or negligence, if any, of the master, officers, engineers or crew of said steamship for the matters and losses alleged in the libel and in the petition.

Sixth. In answer to the seventh article of the petition, the Boston Fruit Company denies that the petitioner had no agent, officer or servant on board said steamship at the time of the collision, and on the contrary alleges that the master and officers of said steamship were in legal effect, under the terms of said charter party, the agents and servants of said steamship and her owners, and said steamship and owners were alone liable for any negligence or default in the navigation of said steamship. And not waiving the above claim and denial, the Boston Fruit Company admits that the circumstances of the collision were as alleged in the petition, and that said collision was caused wholly by the negligence and fault of those in charge of the navigation of said schooner Fortuna, as alleged and specified in the petition, and said collision was not in any manner caused or contributed to by said steamship or those in charge of her navigation. And the Boston Fruit Company denies that the persons on said steamship, charged by the libel with fault, were its agents or servants, or that as charterer of said steamship it can or should be held liable therefor, if any such fault be proven.

Seventh. The Boston Fruit Company admits the allegations in the eighth article of the petition. Wherefore, the Boston Fruit Company prays that the petition may be dismissed with costs.

BOSTON FRUIT COMPANY,
A. W. PRESTON, *Manager.*

RUSSELL & RUSSELL, *Proctors.*

Subscribed and sworn to before me,

[SEAL] CHAS. THEO. RUSSELL, *Notary Public.*

On said sixth day of November, A. D. 1896, the following answer was filed in the clerk's office, viz:—

ANSWER OF BOSTON FRUIT COMPANY TO PETITION OF HAROLD EMERNAN ET AL.

To the Honorable THOMAS L. NELSON, *Judge of said Court:*

The Answer of the Boston Fruit Company to the petition of Harold Emernan and others, intervening for their alleged interests and that of their intestates in the above-entitled libel and cause.

This respondent articulately answers and alleges as follows:

First. It is a corporation duly established by the laws of the Commonwealth of Massachusetts, and located in Boston in said district.

Second. It is ignorant of the matters alleged in the first, second, third, fourth, fifth, sixth and seventh articles of the petition, and will require the petitioners to prove the same, if material.

Third. It admits that a collision occurred on Jan. 13, 1896, between the fishing schooner Fortuna and the steamship Barnstable, and it alleges that the circumstances of the collision are correctly stated in the answer of the Turret Steamshipping Company to the libel in this cause; and it denies the allegations in the eighth article of the petition, that the steamship Barnstable was in fault therefor; and on the contrary it alleges that the collision was caused wholly by the fault and negligence of those in charge of the navigation of said schooner.

Fourth. It admits the allegations in the ninth article of the petition, and it alleges that it is not liable for the losses and matters alleged in the petition and libel, and should not be made a party thereto, for the reasons and upon the facts alleged in the answer of the said Boston Fruit Company to the petition of the Turret Steamshipping Company in said cause.

Wherefore, the Boston Fruit Company prays that the petition of said Harold Emernan and others may be dismissed as against it, with costs.

BOSTON FRUIT CO.,
A. W. PRESTON, *Manager.*

RUSSELL & RUSSELL, *Proctors.*

Subscribed and sworn to before me,

[SEAL] CHAS. THEO. RUSSELL, *Notary Public.*

From said September Term, A. D. 1896, this libel was continued from term to term to the March Term thereof, A. D. 1897, when, on the twenty-second day of March, A. D. 1897, the following petition was filed in the clerk's office, viz: —

PETITION OF ISRAEL B. STEWART.

To the Honorable THOMAS L. NELSON, *Judge of the District Court of the United States, within and for the District of Massachusetts:*

And now comes Israel B. Stewart, county of Lunenburg, Nova Scotia, as administrator of the estate of John Thomas Stewart, late of said Lunenburg, and asks to intervene as libellants in the libel of Hall *et al. v.* steamship Barnstable, No. 760, in the United States District Court for the District of Massachusetts; and thereupon the said petitioner alleges and articulately propounds as follows: —

First. That the said John Thomas Stewart was a member of the crew of the late schooner Fortuna.

Second. That the said Israel B. Stewart alleges that by reason of said collision, and resulting therefrom, the said John Thomas Stewart, of said Lunenburg, lost personal effects to the amount of two hundred and fifty dollars ($250), and suffered injuries which resulted in his death, and that he should recover for pain and suffering which resulted in his death, and for his death, the sum of three hundred and fifty dollars ($350).

Third. And said petitioner does further allege that the said collision was caused in the manner as stated in said libel, and that said steamship Barnstable was wholly at fault therefor.

Fourth. And said petitioner does further allege that the Turret Steamshipping Company, Limited, appeared in the above libel and claimed said steamship Barnstable and gave bond to release her, and said claimant filed a petition to bring in as a party respondent the Boston Fruit Company, alleging that it was the charterer of said steamship Barnstable, and in sole charge and control of her at the time of the collision.

And said petitioner therefore prays that said Boston Fruit Company shall be made a party respondent to this petition, and also in the original libel and intervening petitions already on file, and that it shall be summoned to appear and answer to said libel and peti-

tions, and to answer to any decree that may be rendered against it in behalf of said libellants or either of said petitions.

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

And your petitioner further prays that he may thus become a party to said libel by intervention, and that said libel may be so amended as to include him as libellant therein, and so as to include the Boston Fruit Company as a party respondent in said libel and said petitions; and that the stipulations given in said libel may be extended to cover the claims contained in this petition, and that a warrant may issue to the stipulators therein to show cause, if any, why said stipulations should not be so extended.

ISRAEL B. STEWART,
Adm'r Estate JOHN T. STEWART,
by L. R. CRAWFORD, *Attorney.*

CARVER & BLODGETT, *Proctors.*

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss. BOSTON, March 22, 1897.

Then personally appeared L. R. Crawford, in behalf of said petitioner, and took oath that the above statement of facts by him subscribed are true to the best of his knowledge and belief.

In witness whereof, I hereunto set my hand and affix my notarial seal the day and year first above written.

[SEAL] EDWARD E. BLODGETT, *Notary Public.*

On the twelfth day of May, A. D. 1897, the following answer was filed in the clerk's office, viz: —

ANSWER OF TURRET STEAMSHIPPING COMPANY, LIMITED, TO PETITION OF HAROLD EMERNAN ET AL.

To the Honorable THOMAS L. NELSON, *United States District Judge for the District of Massachusetts:*

The Answer of the Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, to the petition of Harold Emernan and James M. Anderson, as administrators of the estate of Harvey Emernan; Levi Menac, as administrator of the estate of Crawford Menac; Minnie A. Ackerman, as administratrix of the

estate of William Ackerman; Joseph Clark, as administrator of the estate of John Clark; Lillian M. Childs, as administratrix of the estate of Robert W. Childs, and Richard Tobin, as administrator of the estate of William Tobin, praying to intervene as libellants in the libel of A. G. Hall *et al.* against the steamship Barnstable, No. 760, in the United States District Court for the District of Massachusetts, alleges as follows:

First. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the first article of said petition.

Second. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the second article of said petition, except it denies that any sum should be recovered for the alleged pain, suffering and death of said Harvey Emernan.

Third. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the third article of said petition, except it denies that any sum should be recovered for the alleged pain, suffering and death of said Crawford Menac.

Fourth. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the fourth article of said petition, except it denies that any sum should be recovered for the alleged pain, suffering and death of said William Ackerman.

Fifth. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the fifth article of said petition, except it denies that any sum should be recovered for the alleged pain, suffering and death of said John Clark.

Sixth. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the sixth article of said petition, except it denies that any sum should be recovered for the alleged pain, suffering and death of said Robert W. Childs.

Seventh. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the seventh article of said petition, except it denies that any sum should be recovered for the alleged pain, suffering and death of said William Tobin.

Eighth. It denies the matters alleged in the eighth article of the said petition.

Ninth. It admits the matters alleged in the ninth article of said petition.

Tenth. It denies the truth of the premises of said petition, but it admits the jurisdiction of this Honorable Court.

Eleventh. Further answering said petition, and for a further and separate defence, the Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, alleges that said collision was caused by the negligence of those in charge of the schooner Fortuna, and that if the said collision was caused or contributed to in any way by the negligence of those in charge of the Barnstable, which is not admitted, that such negligence was the negligence of the Boston Fruit Company, whose servants were in full charge and control of the said steamship at the time of the collision, and not the negligence of this claimant: and the claimant refers to, and here repeats, with the same force and effect as if herein specifically set forth, all the matters stated in the said petition of the Turret Steamshipping Company, Limited, in the suit of A. G. Hall *et al.* against the steamship Barnstable, praying that the said Boston Fruit Company be made party defendant and decreed to pay all damages, if any, for the losses and matters alleged in the libel of A. G. Hall *et al.* against the said vessel, and the claimant avers that the facts and circumstances of said collision are therein correctly set forth.

Twelfth. All and singular the premises of this answer are true.

Wherefore the claimant prays that said petition may be dismissed with costs, or that the Court will make such other or different decree as the justice of the cause presented herein under the said petition and answer thereto may require.

CONVERS & KIRLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK,
CITY AND COUNTY OF NEW YORK, ss.

E. B. Convers, being duly sworn, says that he is one of the Proctors for the claimant herein, and that the foregoing answer is true according to his information and belief, derived from statements made by the claimant's witnesses. He further says that the claimant is a foreign corporation, and all of its officers are absent from the United States. E. B. CONVERS.

Sworn to before me this eleventh day of May, 1897.

[SEAL] FREDERICK GREEN,
Notary Public, New York County.

On said twelfth day of May, A. D. 1897, the following answer was filed in the clerk's office, viz: —

ANSWER OF TURRET STEAMSHIPPING COMPANY, LIMITED, TO PETITION OF I. B. STEWART.

To the Honorable THOMAS L. NELSON, *United States District Judge for the District of Massachusetts:*

The Answer of the Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, to the petition of Israel B. Stewart, as administrator of the estate of John Thomas Stewart, praying to intervene as libellant in the libel of A. G. Hall *et al.* against the steamship Barnstable, No. 760, in the United States District Court for the District of Massachusetts, alleges as follows:

First. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the first article of said petition.

Second. It denies any knowledge or information sufficient to form a belief as to the matters alleged in the second article of said petition, except it denies that neither $350 nor any sum should be recovered for the alleged pain, suffering and death of said John Thomas Stewart.

Third. It denies the matters alleged in the third article of said petition.

Fourth. It admits the matters alleged in the fourth article of said petition.

Fifth. It denies the truth of the premises of said petition, but it admits the jurisdiction of this Honorable Court.

Sixth. Further answering said petition, and for a further and separate defence, the Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, alleges that said collision was caused by the negligence of those in charge of the schooner Fortuna, and that if the said collision was caused or contributed to in any way by the negligence of those in charge of the Barnstable, which is not admitted, that such negligence was the negligence of the Boston Fruit Company, whose servants were in full charge and control of the said steamship at the time of the collision, and not the negligence of this claimant; and the claimant refers to, and here repeats, with the same force and effect as if herein specifically set forth, all

the matters stated in the said petition of the Turret Steamshipping Company, Limited, in the suit of A. G. Hall *et al.* against the steamship Barnstable, praying that the said Boston Fruit Company be made party defendant and decreed to pay all damages, if any, for the losses and matters alleged in the libel of A. G. Hall *et al.* against the said vessel; and the claimant avers that the facts and circumstances of said collision are therein correctly set forth.

Seventh. All and singular the premises of this answer are true.

Wherefore the claimant prays that said petition may be dismissed with costs, or that the Court will make such other or different decree as the justice of the cause presented herein, under the said petition and answer thereto, may require.

CONVERS & KIRLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK,
CITY AND COUNTY OF NEW YORK, ss.

E. B. Convers, being duly sworn, says that he is one of the Proctors for the claimant herein, and that the foregoing answer is true according to his information and belief, derived from statements made by the claimant's witnesses. He further says that the claimant is a foreign corporation, and all of its officers are absent from the United States.

E. B. CONVERS.

Sworn to before me this eleventh day of May, 1897.

[SEAL] FREDERICK GREEN,
Notary Public, New York County.

On said twelfth day of May, A. D. 1897, the following agreement was filed in the clerk's office, viz: —

UNITED STATES DISTRICT COURT,
DISTRICT OF MASSACHUSETTS.

HALL ET AL., *Libellants*,

v.

THE STEAMSHIP BARNSTABLE, TURRET STEAMSHIPPING COMPANY, LIMITED, CLAIMANT, AND THE BOSTON FRUIT COMPANY, RESPONDENT.

NUNAN ET AL., INTERVENING LIBELLANTS, *v.* SAME.

PETITION OF THE TURRET STEAMSHIPPING COMPANY, LIMITED,

v.

BOSTON FRUIT COMPANY.

AGREEMENT FOR DAMAGES TO LIBELLANTS AND PETITIONERS.

In the above entitled cases it is hereby agreed that the value of the property of the libellants and intervening libellants destroyed, and the amount of damage suffered by them by reason of the collision set forth in said libel, are as follows:

A. G. Hall *et al.*,	Value Schooner Fortuna . .	$10,000.00
A. G. Hall *et al.*,	Value outfits and gear Schooner Fortuna	1,100.00
John W. Greenlaw,	value outfits and personal effects Fortuna	1,072.00
Victor Sampson,	value personal effects . . .	100.00
Thomas McGuire,	" " " . . .	140.00
Michael Dunphy,	" " " . . .	115.00
Michael Hearsey,	" " " . . .	168.00
Harding Paul,	" " " . . .	113.00
John Malcolm,	" " " . . .	140.00
Robert Hayes,	" " " . . .	115.00
Fred Lawrence,	" " " . . .	123.00
James D. Goodwin,	" " " . . .	100.00
William Feener,	" " " . . .	68.00

Ernest Cross, value personal effects . . .	$101	
and personal injuries . . .		$300.00
John Hayward, value personal effects . . .	150	
and personal injuries . . .		150.00
Arthur W. Nunan, value personal effects . .	95	
and personal injuries . . .		2000.00
Harold Emernan *et al.*, Admrs. Estate of Harvey Emernan, personal effects . . .	125	
and personal injuries . . .		350.00
Levi Menac, Admr. Estate of Crawford Menac, personal effects	125	
and personal injuries, . . .		350.00
Minnie C. Ackerman, Admx. Estate of William Ackerman, personal effects . .	125	
and personal injuries . . .		350.00
Joseph Clark, Admr. Estate of John Clark, personal effects	125	
and personal injuries . . .		350.00
Lillian M. Childs, Admx. Estate of Robert W. Childs, personal effects . . .	125	
and personal injuries . . .		350.00
Richard Tobin, Admr. Estate of William Tobin, personal effects	125	
and personal injuries . . .		350.00
Israel B. Stewart, Admr. Estate of John T. Stewart, personal effects	125	
and personal injuries . . .		350.00
		1221.00
Total		$19,475.00

with interest from Jan. 1, 1897, at 6% per annum.

CARVER & BLODGETT,
Proctors for Libellants and Intervening Libellants.

CONVERS & KIRLIN,
Proctors for owners Steamship Barnstable.

RUSSELL & RUSSELL,
Proctors for Boston Fruit Company.

On said twelfth day of May, A. D. 1897, the following stipulation was filed in the clerk's office, viz:—

STIPULATION REGARDING FACTS.

In the above-entitled cause it is stipulated and agreed by and between the Turret Steamshipping Company (Limited), claimant and owner of the steamship Barnstable, and the Boston Fruit Company, charterers, as follows:

First. The collision alleged in the pleadings in the above-entitled cause was caused by the fault and neglect of those in charge of the navigation of the steamship Barnstable at the time, and was not caused or contributed to by the engineer of said steamship, nor by those in charge of the navigation of the libellants' schooner Fortuna; but this admission is made without prejudice to and without intent to waive any of the contentions of either of the parties hereto regarding the liability of either as against the other, as set forth in the petition of said Turret Steamship Company (Limited), and the answer of said Boston Fruit Company thereto.

Second. The master, officers, engineers, firemen and crew of the Barnstable at the time of the collision had been appointed by the Boston Fruit Company, and were paid by it under and pursuant to the charter party referred to in said petition.

Third. The said steamship Barnstable had been engaged under the charter party, a copy of which is attached to the said petition, for more than six months before said collision.

Fourth. No complaint was ever made by either party under clause eleven of said charter party.

Fifth. There was no compulsory pilot on board said steamship at the time of the collision.

Sixth. The collision was caused by the negligence of master, mates or crew at the time in charge of the navigation of the steamship.

Seventh. The master, mate, engineers, firemen and crew, appointed as provided in said charter party, were the only persons at the time in charge of the navigation of the said steamship and responsible therefor.

Eighth. It is further agreed (subject to objection, that the fact is immaterial and the evidence incompetent) that the Boston Fruit Company had no insurance upon said steamship, and the petitioner, the then owner, carried a line of insurance on the vessel against sea perils, including collisions, but not for the full value of the vessel, the owner being in part uninsured.

APRIL 13, 1897.

CONVERS & KIRLIN,
Proctors for TURRET STEAMSHIPPING COMPANY,
Claimant and Petitioner.
RUSSELL & RUSSELL,
Proctors for BOSTON FRUIT COMPANY.

UNITED STATES DISTRICT COURT,
DISTRICT OF MASSACHUSETTS.

A. G. HALL ET AL., *Libellants,*
v.
THE STEAMSHIP BARNSTABLE, ETC., *Claimant.*

IN THE MATTER OF THE PETITION OF THE TURRET STEAMSHIPPING COMPANY *v.* THE BOSTON FRUIT COMPANY.

DEPOSITION OF WILLIAM H. BENNETT TAKEN ON BEHALF OF THE BOSTON FRUIT COMPANY.

NEW YORK, March 18, 1897, 11 o'clock, A M.

PRESENT: C. T. RUSSELL, Esq., *for the* BOSTON FRUIT COMPANY; Messrs. CONVERS & KIRLIN (*by* Mr. KIRLIN), *for the Petitioner.*

In the above-entitled cause it is stipulated that the deposition of William H. Bennett may be taken at the office of Messrs. Convers & Kirlin, New York, on the eighteenth day of March, 1897, at 11 o'clock, A. M., by consent of parties; that notice of the taking is waived; that the deposition may be taken by a stenographer; that signing, filing and certification are waived; the petitioner reserving all objections to the relevancy or competency of the evidence.

DEPOSITION OF WILLIAM H. BENNETT.

William H. Bennett, called on behalf of the Boston Fruit Company, being duly sworn, testifies as follows:

Direct Examination by Mr. RUSSELL.

Q. 1. Captain, what is your name and residence? *A.* William H. Bennett; New York.

Q. 2. What is your occupation? *A.* Steamship agent and broker.

Q. 3. How long have you been a steamship agent and broker? *A.* Since 1885.

Q. 4. In 1893, what was your business? *A.* Steamship agent and broker.

Q. 5. Were you connected as a partner in any firm? *A.* As a partner of the firm of W. W. Hurlbut & Company.

Q. 6. How long had you been connected with that firm? *A.* Since 1886 or 1887.

Q. 7. What was their business? *A.* Steamship agents and brokers.

Q. 8. Were they or not engaged in negotiating charter parties with various steamers? *A.* That was their business.

Q. 9. What was the extent of their business? *A.* They made a specialty of time charters, the purchase and sale of steamers; probably did the bulk of that business on this side of the water.

Q. 10. And what personally did you have to do with it? *A.* As an active partner in the concern.

Q. 11. And actively engaged in negotiating these charter parties? *A.* Yes.

Q. 12. And what, in general, was the extent of their business in chartering vessels? *A.* In time charters, the purchase and selling and construction of steamers, I presume they did the bulk of that business on this side of the water.

Q. 12½. Did or did not the firm prepare the forms of charters used in these negotiations? *A.* I generally prepared the forms of charters.

Q. 13. Did you or not have anything to do with the charter of the steamship Barnstable in 1893? *A.* I negotiated it for the owners and charterers as broker.

Q. 14. With whom did you negotiate it? *A.* With R. Craggs & Sons, shipbuilders and owners of vessels — contracted for it.

Q. 15. You represented them? *A.* I presume I represented both sides as broker.

Q. 16. Who were the charterers? *A.* The Boston Fruit Company.

Q. 17. Have you got a copy of the charter party you then negotiated? *A.* Yes.

Q. 18. Will you produce it? [*Witness produces a paper. Said copy of charter party produced by the witness is marked for identification. "Exhibit A*, March* 18, 1897, *E. H. C., Sten".*]

Q. 19. Where is the original charter party? *A.* On file in our office.

Q. 20. At the time of the negotiation of that charter party did you or not have any conversation with any of the owners? *A.* I had a great many conversations with them.

Q. 21. Please give them. *A.* The first was with Mr. Ernest Craggs in New York; and with his father (I think his name is R. Craggs) at his office in London; and also with Ernest Craggs and his father at their ship yards and offices in Middlesbrough.

Q. 22. Taking the first conversation with Mr. Ernest Craggs, where was that in New York? *A.* At our offices in New York.

Mr. KIRLIN. I object to all conversations prior to the signature of the charter as immaterial, irrelevant and incompetent, and inadmissible to explain the writing. I desire this objection to apply to all questions concerning conversations about the charter.

Q. 23. When did you have any conversation with Mr. Ernest Craggs? *A.* Sometime in New York previous to March, 1893,—I think September, 1892.

Q. 24. What was that conversation about? *A.* I told him in a

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* This Exhibit A is annexed to this deposition, but I omit the printing of it as it is the same as the Time Charter, Exhibit C, printed on pages 14 to 18.

JOHN G. STETSON, *Clerk.*

general way that we wanted two steamers. I then went on to London, and closed the contract practically.

Q. 25. Please state the circumstances under which you closed the contract in London. *A.* The Boston Fruit Company had given me authority to pay a certain price — on this very usual form of charter. I drew up one in pencil; left some blank forms with my correspondents in London. They sent the charter out to me to sign. I returned it with the signature of the Boston Fruit Company — at least, I returned them copies after the Boston Fruit Company had signed it in the usual way.

Q. 26. When did you meet Mr. Craggs in London? *A.* Several times. I think in October, November, and early December, 1892.

Q. 27. Did you have any conversation with him in regard to the charter party? *A.* We continually were talking about the charter party and the ships, and the clauses and stipulations in it, and the price.

Q. 28. Who drafted the charter party? *A.* I drafted the charter party.

Q. 29. Is it in accordance with any regular form, or is it original with you? *A.* It is a form adapted by me from the old English form of net charter, and altered to meet the requirements of the American trade.

Q. 30. What do you mean by net charter? *A.* On the net charter the charterer pays for crew and provisions. On the ordinary time charter, or admiralty form, as we call it, the owner pays for crew and provisions.

Q. 31. Did you have any conversation with Mr. Craggs in regard to the insurance clause? [*Same objection.*]

Q. 32. Clause No. 32. [*Same objection.*] *A.* I did.

Q. 33. At whose suggestion was that clause inserted in the charter party? *A.* I inserted it in the charter party.

Q. 34. And for what purpose? *A.* To show that the owners paid for all insurance on the vessel.

Q. 35. And what is included in the insurance on the vessel? [*Same objection.*] *A.* The same as in all forms of time charter; the owner pays for the insurance on the vessel against stranding, collision, etc., as usual.

Q. 36. Did you have any conversation with Mr. Craggs in regard to that clause? *A.* I did; several.

Q. 37. Please state the substance of that conversation. [*Same objection.*] *A.* I told him that he would have to insure for his vessel, the same as the charter party stated.

Q. 38. Did he make any reply? [*Same objection.*] *A.* Of course I told him if he did not want to insure he could take that risk. But his intention was to insure.

Q. 39. Do you know whether, in fact, he did insure? *A.* I don't know of my own knowledge.

Q. 40. In clause 11 of the charter party who added the written words? *A.* In the charter party that I drafted I wrote those words in.

Q. 41. And under what circumstances? *A.* Simply because Mr. Craggs wished the usual right to have the power to discharge captain or officers if it did not suit his interests to have them in; in other words if they were objectionable, did not attend to their business, got drunk, or prejudiced the interest of the ship in any way, that he had power to remove them and have others appointed.

Q. 42. And he requested the insertion of that provision, did he? *A.* He did. And I suggested it to him for his protection.

Q. 43. And the words were added to the printed form? *A.* The words were added to the printed form.

Cross Examination by Mr. KIRLIN.

×-*Q.* 44. Captain Bennett, I notice you do not mention any cases within your experience where you have ever had occasion to deal with this clause 22 about insurance. Have you ever had any such cases? *A.* I think that I have chartered all the boats to my knowledge on this side of the water on that form.

×-*Q.* 45. Isn't that a universal form in net-form time charters? *A.* No.

×-*Q.* 46. Do you know the English government form when you see it? *A.* I know the English government form; but they don't put it in as explicit as I put that clause in.

×-*Q.* 47. Do you know the English government form when you see it, is the question. *A.* The English form has been so altered

and varied in the last ten years that I don't think that there are six copies in existence.

×-*Q.* 48. [*Paper shown witness.*] Please look at the document which I show you, marked "government form of charter party", which by a note at the foot purports to be sold by her Majesty's Official Agency for Customs forms, 6 Harp Lane, London, and see if you recognize that as the government form which you have spoken about. *A.* It is not the government form in use on this side of the water.

×-*Q.* 49. What do you mean by "government form on this side of the water"? What government? *A.* Because —

×-*Q.* 50. What government? *A.* It is not the English government form in use on this side of the water known to us as the admiralty form, because every broker alters the form to suit himself.

×-*Q.* 51. Do you recognize this as the original form — *A.* (*interrupting*) I do not.

×-*Q.* 52 (*continuing*). — from which you get the expression "government form of charter party"? *A.* If this charter is in use I have never seen a charter party made under it on this side of the water. [*Said paper is marked* "Petitioner's Exhibit 1 for identification, March 18, 1897".]

×-*Q.* 53. Did you ever see an English form? *A.* That is the gross form — not the net form that you showed me; that is the admiralty form, not the net form of charter on which these boats are chartered.

×-*Q.* 54. Your clause in regard to insurance provides "That the owners shall pay for the insurance on the vessel" — clause 22. Do you notice that this government form that I show you, which is marked "Petitioner's Exhibit 1 for identification", has the clause in the same words: "shall pay for the insurance on the vessel"? *A.* "Etc."

×-*Q.* 55. Well, that is all there is about insurance, isn't it? *A.* No.

×-*Q.* 56. What else do you see there about insurance? *A.* That the owner shall pay for the insurance on the vessel; but in the charter party that I drew the owner shall pay for *all* insurance on the vessel. In order to show —

×-*Q.* 57. Just look at the clause in the copy which is marked "Exhibit A", and see if it does not say "the owners shall pay for *the* insurance"? *A.* That the owners shall pay for the insurance.

×-*Q.* 58. *The* insurance on the vessel? *A.* That was put in to specify as briefly as they could that the owners should pay for insurance.

×-*Q.* 59. I have not asked you about that. Look at this English form, and see if it is not in the same words: "shall pay for *the* insurance." *A.* Yes. It is in all charter parties more or less in different ways — that is, all forms of time charter.

[*The question put to the witness on page* 42, "Isn't that a universal form in net-form time charters?" *is now referred back to and read, and is put to the witness in the following form:*]

×-*Q.* 60. Isn't that insurance clause a universal form in net-form time charters? *A.* That is a different question. The insurance clause in all forms of time charter that I know of varies a little as expressed.

×-*Q.* 61. Isn't it generally limited to these words: "the owners shall pay for the insurance of" — or "on — the vessel"? *A.* In almost all forms of the admiralty form it is put in in some such way, to signify the owner shall pay for all insurance on the vessel or appertaining to it.

×-*Q.* 62. Now you are adding a new element. Have you ever seen the clause "or appertaining to it"? *A.* Yes.

×-*Q.* 63. In any American form? *A.* They have it and have used it where the insurance on the vessel has taken the risk in coals in the bunkers on commission, and various other things.

×-*Q.* 64. You have had no experience, I understand you, of the actual working out of this clause in any particular cases? *A.* I have had a good deal of experience in various insurance claims — so much so that I clearly expressed to the owner that he would have to pay for all insurance on the vessel in any way, shape and manner against stranding, collision and everything, as is usually done in all vessels, unless he wanted to take the risk and not insure.

×-*Q.* 65. Tell us what experience you have actually had of these insurance clauses, or the working out of them. *A.* I have never known an owner to insure a charter for damage by collisions before. He has always taken that risk.

×-*Q.* 66. Name a case to me within your experience in which the question has arisen prior to this. *A.* There has never been a case to my knowledge in which an owner sought to recover from the charterer any damage done to the vessel by collision.

×-*Q.* 67. Can you name a case in your experience where it has ever arisen before, or where there have ever been any facts upon which such a controversy could arise? *A.* We have had hundreds of steamers that have been ashore, or in collision with other vessels, in which no claim has been made on the charterers.

×-*Q.* 68. Mention a name or two. *A.* A name or two of the steamers?

×-*Q.* 69. Yes. *A.* Do you wish to go into that very fully?

×-*Q.* 70. Yes; in the net form. *A.* Net form. The Ethelred and Ethelwold, on this form, have been ashore; they have been in collision at various times; and the managing owner, Mr. John Colvils, has paid the insurance on all claims; and he told me personally that he had no grounds for claim against the owners.

Mr. RUSSELL. Against the charterers, you mean?

WITNESS. Against the charterers. The Carib Prince and the Creole Prince (you know them); I had several cases in which they made no claim against the charterers.

×-*Q.* 71. And in which no claim was sustained against the vessels, weren't they? *A.* And in which no claim was sustained against the vessels. The vessels were damaged.

×-*Q.* 72. Damaged by what? *A.* I don't know whether the owners collected from the insurance, or whether they were insured or not.

×-*Q.* 73. Damaged by what? *A.* In various ways. By lighters or steamers or wharves being in collision with them, or by stranding. The Ethelred and the Ethelwold. I had some ten or twelve insurance matters since that have been on this former charter, and in no case has the charterer been asked or expected; and the owner clearly said to me he had insured against collision and everything else. I have never known of the case of an owner making a claim on the charterer for any damage caused by collision, or stranding, or anything else, as he knows very well he has got to insure or take the risk to the steamer or for any damage the steamer does.

×-*Q.* 74. Do you see anything there that requires the owner to insure? *A.* Yes; clause 22. It says that the owner shall pay for the insurance of the vessel.

×-*Q.* 75. Does it say he shall effect it? *A.* The charterers don't care. He can effect it where he likes, or take the risk when he likes.

×-*Q.* 76. Suppose he does not insure. *A.* That is his risk.

×-*Q.* 77. Do you see anything to that effect in the clause? *A.* Not at all. The clause is put in as briefly as it is possible to show that the owner pays the insurance of the vessel. If the charterers care to insure their cargo, that is their lookout.

Mr. RUSSELL. Not cargo; vessel.

WITNESS. I say, if the charterers don't care to insure the cargo of the ship — in other words, if the charterers don't care to insure they take their risk. The owners have nothing to do with it — any more than the charterers have with insuring the vessel.

×-*Q.* 78. You recognize this as a demised charter? *A.* Explain what you mean.

×-*Q.* 79. A charter in which the vessel is virtually turned over to the charterers during the period of charter. *A.* They are virtually time charterers — time charterers to the extent that they don't pay for the vessel, neither do they pay for insurance, nor for crew, except that which is specified.

×-*Q.* 80. Do you know actually whether they do or do not? *A.* The charter party expresses it.

×-*Q.* 81. Do you know about the fact? *A.* What?

×-*Q.* 82. Whether the charterer does insure the vessel, or insure the hull, against risks? *A.* I know very well the charterer does not insure the vessel.

×-*Q.* 83. Do you know that is the case of your own knowledge? *A.* Of my own knowledge?

×-*Q.* 84. Yes. *A.* I have never heard of them insuring any vessels. I don't see why they should, in that form of charter.

×-*Q.* 85. When has this matter first come to your attention as a practical matter, Mr. Bennett? *A.* I really think the first time I ever heard of the claim was from you personally.

×-*Q.* 86. You never heard of the question being suggested

before, have you? *A.* Never before. No question has ever to my knowledge —

×-*Q.* 87. Until this case arose? *A.* Until this case arose.

×-*Q.* 88. And the matter was therefore never present to your mind before that as a mooted question? *A.* It has always been understood by charterers and by owners that the owners pay all insurance on vessels under time charters. It is so stipulated in the charter parties, and so understood by both.

×-*Q.* 89. That is what you say, but you do not mention any cases in which this actually came up as a practical matter. *A.* Because I, as a broker, where I charter a vessel on time, will very often try to make a brokerage by effecting insurance on a vessel. And I, as a shareholder in a steamer, and that steamer on time, will insure my share of that vessel, either direct or through the managing owner, for all risk of stranding, collision, or anything else.

×-*Q.* 90. Don't you know that when it is intended that the charterer shall have the benefit of insurance, it is so specified in the charter parties? *A.* It is specified in this charter that the owner shall pay for the insurance on the vessel.

×-*Q.* 91. Yes; but that is a different matter from the matter that we have on hand at present? *A.* I don't see it.

×-*Q.* 92. Let me ask the question again. Don't you know that when it is intended that the owner shall insure the vessel and give the charterer the benefit of it, in any case where the charterer might otherwise be liable, that that is so distinctly provided in the charter party? *A.* I can't quite understand what you mean. I know that no charterer will take a vessel if he had to insure her.

×-*Q.* 93. Now, that is pretty plain. Haven't you seen forms of charter in which there are specific provisions that the charterer shall have the benefit of the owner's insurance on the vessel? *A.* I don't see what the charterer has got to do with the owner insuring the vessel.

×-*Q.* 94. Be good enough to answer the question. *A.* I can't understand your question. I tell you that frankly.

×-*Q.* 95. Have you not had vessels under your control, or whose business has passed through your office, in which there have been provisions as to who should have the benefit of insurance that

the owners make on the vessel? *A.* I have never seen a charter passed through our office, or any other office, in which the charterer insured the vessel or got any benefits from insuring the vessel, whether made by the owners or anybody else.

×-*Q.* 96. And you think this clause is not intended to give the charterer the benefit of insurance on the vessel? *A.* I think that clause — I know that that clause — is clearly intended that the owners take the risk of insuring their vessel, and that the charterer has nothing to do with it.

×-*Q.* 97. It is not for his benefit at all? *A.* The charterer does not care whether the vessel is insured or not.

×-*Q.* 98. It never enters his mind? *A.* It never enters his mind.

×-*Q.* 99. That he may have any question about it? *A.* He never asks the question. It does not concern him.

×-*Q.* 100. And therefore the intention is that the owner shall insure the vessel for his own benefit? *A.* The intention is clearly that if the owner insures the vessel he must pay for the insurance, not the charterer.

×-*Q.* 101. Well, under this charter party the charterers' servants, or at least the charterers' officers, are in command of the navigation, are they not? *A.* The charterers' officers and captain are appointed by the charterers, with the owner having the power to dismiss them at any time should they prove detrimental to his interests or the interests of the vessel, or negligent in their duties.

×-*Q.* 102. Read me anything in the charter party which gives them that power. *A.* Clause 11 says: "If the charterers shall have reason to be dissatisfied with the conduct of the chief engineer during first six months, the owner shall, on receiving particulars of the complaint, investigate the same, and, if called upon, make a change in the appointments when the steamer is in". The word "port" should be in here; it is omitted through a clerical error. Then it goes on to say that "owners have same privilege as regards captain and officers and engineers during continuance of charter". These words were written in, in conversation with Mr. Craggs, so that he would have the power to remove them at any time, and agreed to both verbally and —

×-*Q.* 103. Don't you see, Captain Bennett, that the language does not say that? Don't you see that it gives no other power than to make a complaint? *A.* Not at all.

×-*Q.* 104. And the charterers are the ones — *A.* Not at all. Because it is an understood thing.

×-*Q.* 105. Never mind about "an understood thing". Isn't that what it says? *A.* That is what it says, and it was clearly explained that by that they have to change them if the owner wishes.

×-*Q.* 106. They have to change if the complaint is well founded. But who is it that does the changing according to the charter party? *A.* In many cases in this same steamer the engineer was appointed by the owners.

×-*Q.* 107. For the first six months? *A.* And for the balance they sent another one out.

×-*Q.* 108. Don't you see that he had the right to appoint for only six months? *A.* They had the right to appoint for six months, and as nearly as I recollect it, the man stopped in for nearly two years.

×-*Q.* 109. The point is, don't you see that you are testifying to something different from what the language of the clause is — namely, that the owners shall have the right to make complaint, and that it is the charterers' business? *A.* The owners have the right to make a complaint.

Mr. RUSSELL. The owner shall, on receiving particulars, investigate the same, and if called upon shall make a change.

Mr. KIRLIN. No. The charterers.

WITNESS. The owners have the same privilege.

×-*Q.* 110. Was it not the intention that that written clause should give to the owners the same privilege which in the printed clause was given to the charterers? *A.* Yes; the privilege of having the captain or officers removed if they don't attend to their duties, or get drunk, or do not comply with the requirements of the British Board of Trade. — Do you wish me to answer any of these other vessels?

Mr. RUSSELL. Do you want some more vessels?

Mr. KIRLIN. He does not seem to be able to give any details about them. Vessels are getting stranded and aground and all that sort of thing all the while.

×-*Q.* 111. Have you ever seen, in your experience, a charter party in which these words occurred: "Charterers to have the benefit of the insurance"? *A.* I never have. As a rule, the owners are given no benefit —

×-*Q.* 112. Have you ever seen a charter in which there were any words similar to those? *A.* Not to my knowledge, in which the charterer has got any benefit at all from the insurance.

×-*Q.* 113. Is it, then, your understanding that it is not the intention of this clause to give the charterers the benefit of the insurance? *A.* My understanding of this form of time charter, or any other form for that matter, is that the charterer is never approached on the question of insuring the vessel. He wouldn't touch it. The owner clearly understands that he is to pay for insurance on the vessel; and the charterer, as a rule, never bothers with it —

×-*Q.* 114. The charter says that — *A.* (*continuing*)—and doesn't care whether the vessel is insured or not. It is not his concern.

×-*Q.* 115. It is not your intention to testify that that clause means anything else than what it says? *A.* It is my intention to testify that that clause was put in the charter by me to clearly show that the owners paid for all insurance on the vessel against stranding, collision, and everything else, as is customary in all time charters. And I have never heard the matter questioned before, and I have fixed a thousand steamers on time charter.

×-*Q.* 116. Net form? *A.* Net form and admiralty. There are not today ten vessels on this form of charter on this side of the water.

×-*Q.* 117. The difference between what you call the net form and the admiralty form lies in this, does it not, — the chief difference, — that in the net form the charterers appoint the officers and crew, and in the admiralty form owners do? *A.* No. The chief difference —

×-*Q.* 118. Isn't that *a* difference? *A.* No. In some net forms of charter we take them with the owner's captain and the owner's officers and the owner's engineers. In others, sometimes, we take the officers, and sometimes we take the engineers. The main difference is that in the net form of charter the charterer pays for the wages of the crew, for the provisioning of the crew, and certain stores that he does not pay for in the admiralty form.

×-*Q.* 119. That comes right back to what I asked you: that it is a difference between the net form— *A.* (*interrupting*). What?

×-*Q.* 120 (*continuing*). That the charterers pay for all the wages? *A.* They pay not alone for the wages, but for the provisions and for certain stores. They may make a net form of charter in which the owners pay for provisions, but not the wages and the other. It is according to the question at the time as to how that shall be.

×-*Q.* 121. It is according to the question as to whether it is net or not, isn't it? *A.* I should say it would be a net form of charter party if it was made on this form and the owners paid for provisions and crew. It is only a question of trade; that is all.

×-*Q.* 122. [*Paper shown witness.*] Look at this document I show you and see what kind of form that is. *A.* It is the form of a firm that has failed and has gone out of existence.

×-*Q.* 122*a*. Net or— *A.* (*interrupting*). It is a fruit form of charter, only in use in America.

×-*Q.* 123. Net or admiralty, as you make the distinction? *A.* There is nothing of the net form about it, and it cannot be called an admiralty form. It is simply a form to meet the requirements of the fruit trade in the United States, and is now generally in use with certain alterations.

×-*Q.* 124. [*Another paper shown witness.*] Look at this one which I show you, and say whether that is what you call an admiralty form? *A.* It is the form of a firm of brokers, altered from the admiralty form to meet their views or trade.

×-*Q.* 125. Is it the admiralty form as regards wages and provisions and appointment of officers? *A.* Pretty much so.

×-*Q.* 126. Will that be a fair form to take as showing the difference, in your judgment, on the subject of wages and provisions between the net form and the admiralty form? *A.* No. Because this form of charter belongs to one of the largest firms in the steamship business that do very little chartering on this form.

×-*Q.* 127. I didn't ask you anything about that. I asked you about wages and provisions. That is what you refer to by the words "admiralty form"? *A.* It is not exactly like the admiralty form.

×-*Q.* 128. Will you be good enough to produce and send to us an admiralty form, as you call it, so we can know what you are

talking about? *A.* I don't believe there is today any broker that has ever used an admiralty form on this side of the water; only used on the other side. They have adapted an old admiralty form to meet the requirements of their charters.

×-*Q.* 129. Have you a form that you call an admiralty form? *A.* Brokers call —

×-*Q.* 130. No. *A.* One minute.

×-*Q.* 131. Do you have? *A.* No; nor any one else.

×-*Q.* 132. Then say so. *A.* We call it an admiralty form, but it is not an admiralty form.

×-*Q.* 133. You are using the words "admiralty form". I assume you mean something by it. I am trying to find out what you mean by it. *A.* An admiralty form, as generally known here, is a form got up by various steamship agents on which they charter vessels on time charter, and they all vary more or less.

×-*Q.* 134. Tell me what the provision in what you call the "admiralty form" is regarding wages and provisions — the general provision? *A.* The clause in the ordinary form of time charter, not the net form, is —

×-*Q.* 135. The admiralty form I am asking you about. *A.* The government, or admiralty, or usual form of time charter generally stipulates that the owners shall provide and pay for all provisions, wages, and consular, shipping and discharging fees of the captain, officers, engineers, firemen and crew; and shall pay for the insurance of the vessel, and also for all the cabin, deck, engine room and other necessary stores; and maintain her in a thoroughly efficient state in hull and machinery for and during the service; and that the charterers shall provide and pay for all the coals, port charges, pilotage, agencies, commissions, consular charges except those appertaining to the captain, officers, or crews, and all other charges whatsoever excepting those before stated (*Witness looking at a paper*).

×-*Q.* 136. State the provisions regarding the same subjects in the net form of charter. *A.* The net form of charter states that the charterers shall provide and pay for all oils and stores for the vessel, gear, tackle and appliances for loading and discharging the cargo, and for all the provisions and wages of the captain, officers, engineers,

firemen and crew; that the owners shall pay for the insurance and other things not specified. In other words, you can't make charterers pay for what is not specified.

×-*Q.* 137. You did not read that out of the charter party — that last part of it — did you? *A.* It is clearly what the charterers pay for; what is not specified for them to pay they never have paid, nor are they expected to pay it.

×-*Q.* 138. Isn't it always specified what the owners shall pay for? *A.* The general term of the charter party specifies that they shall pay for everything except that.

×-*Q.* 139 Where is that general term? *A.* Read it right through.

×-*Q.* 140. You point it out to me. It is your form. *A.* The charter starts by stating that the steamer shall be provided with winches, propeller, crank shaft, tail shaft, etc.

×-*Q.* 141. There is no use reading it aloud. We know what is provided by one, and what by the other. You say that there is a provision that they shall pay for everything that is not provided. *A.* I don't say anything of the kind. I say it is specified exactly what the charterers shall pay for, and they cannot be made to pay for anything else, and it is understood by the charter that the owners pay for what is not specified that the charterers shall pay for.

Mr. Russell. That is your necessary implication?

Witness. Yes.

×-*Q.* 142. That is your implication. But there is no provision in the charter to that effect, is there? *A.* I think you will find it in there — in clause 2, in which it states that the owners shall maintain the vessel in a thoroughly efficient state in hull and machinery for the service, etc.

×-*Q.* 143. Certainly that is a plain provision; but you say that things that are not provided for are to be paid for by the owners, and I ask you to point out anything in the charter which says that. *A.* Because in clause 2 it states, as I have before said, that the owners shall maintain the vessel. Naturally, they would have to pay for everything that is necessary to maintain the vessel; and the charter specifies what is required of the charterers to pay.

×-*Q.* 144. That is the clause to which you refer, then, as the foundation for the inference you draw? *A.* Yes, — and by clause 8.

×-*Q.* 145. [*Paper shown witness.*] Look at this document which I show you, and say whether you recognize that as a form of a former firm of W. W. Hurlbut & Company? *A.* That is one of their forms of time charter; but after I left the firm they got up some forms, and I would have to look through it to see.

×-*Q.* 146. Do you know whether this was before or after you left the firm? *A.* I am pretty sure it is after it, by the color. Without I examined it all through, word by word, I wouldn't trust myself to swear on it. [*Said paper is marked* "Petitioner's Exhibit 3 for identification, March 18, 1897".]

×-*Q.* 147. You know the firm of Miller, Bull & Knowlton here, ship brokers, in New York? *A.* Yes.

×-*Q.* 148. They have been ship brokers for a great many years in New York, have they not? *A.* Yes.

×-*Q.* 149. [*Paper shown witness.*] Do you recognize that as their form of time charter? *A.* I recognize this as a form which the firm of Miller, Bull & Knowlton tried to charter steamers on, on which I have chartered them several, but on which owners object to it, as it differs from the ordinary admiralty form in various clauses, — 27, 25, 24, 17. In fact, in other words, the charter is altered to suit the people who drew it up.

Mr. Russell. The form is altered, you mean.

Witness. Yes. The form is altered to suit the people who drew it up in the interest of their own business, and is not in general use. [*Said paper is marked* "Petitioner's Exhibit 4 for identification March 18, 1897".]

×-*Q.* 150. Just read us what it says about insurance. *A.* Clause 1 is very near what is usual in the government form of charter, but not in the net.

×-*Q.* 151. Doesn't it say the owners "shall pay for the insurance of the vessel"? *A.* It does. It does in most all forms of time charter, — that the owner shall pay for the insurance of, or on, the vessel.

×-*Q.* 152. It says it in that one? *A.* Yes.

×-*Q.* 153. You know the firm of Bowring & Archibald, steamship agents, New York? *A.* Yes.

×-*Q.* 154. [*Paper shown witness.*] Do you recognize that

as their form? *A.* Bowring & Archibald have several various forms.

×-*Q.* 155. That is one of them? *A.* This is their government form of time charter — not net form. And that, as the other charters you show me, is to meet the requirements of their trade, and so altered from the old admiralty form or government form.

×-*Q.* 156. The provision there is that the owners "shall pay for the insurance of the vessel", is it not? *A.* It so states there. [*Said paper is marked* "Petitioner's Exhibit 5 for identification, March 18, 1897".]

×-*Q.* 157. [*Paper shown witness.*] Do you recognize this as another one of their forms? *A.* This is another of their forms. [*Said paper is marked* "Petitioner's Exhibit 6 for identification, March 18, 1897".]

×-*Q.* 158. The provision there for insurance is identical, is it not? *A.* It is stated in all time charter forms much the same as this: that the owner shall pay for the insurance of the vessel. The clerical wording in some is that they shall pay the insurance on the vessel, or for the vessel, the object being to show that the owners pay insurance.

[*Counsel for petitioner moves to strike out the latter part of the answer as not responsive.*]

×-*Q.* 159. The question I asked you was whether the provision in this form is not also that the owners "shall pay for the insurance of the vessel." *A.* Am I obliged to answer yes or no to that question?

Mr. Russell. You can answer yes or no, and then you can explain your answer.

A. As long as I am allowed to explain my answer, — yes.

Mr. Russell. Now you can go on and explain your answer.

Witness. The object being in all these forms of time charter to show that the owner shall pay for the insurance on or for the vessel; there is a difference in the way of expressing it in various charters.

[*Counsel for petitioner moves to strike out all of the answer as irresponsive.*]

×-*Q.* 160. Do you know the firm of Barber & Company, steamship agents here? *A.* Yes.

×-*Q.* 161. [*Paper shown witness.*] Do you recognize that as their government form? *A.* That is one of their forms. I do not think that is the present one in use. It has become obsolete.

×-*Q.* 162. You see the figures "189" in the body of it? *A.* Yes; but still, despite that, I have closed ten boats with them in time charter within the last six months on another form.

×-*Q.* 163. That has been a form somewhere in the decade 1890? *A.* That has been a form they adapted; but, if you will look at it, it is for special business. It is for the west coast of South America, to meet the requirements of that trade. [*Said paper is marked* "Petitioner's Exhibit 7 for identification, March 18, 1897."]

×-*Q.* 164. The provision there is, is it not, that the "owners * * * shall pay for the insurance *of* the vessel"? *A.* I answer that the same way. Yes; the object in all these charters being to show that the owners shall pay for the insurance of the vessel. The way of expressing it, "on" or "for" the vessel — the way of expressing whether "on" or "for" the vessel — being a matter of opinion — how the firm have their charters printed; the main object being to show that the owners pay for all insurance on the vessel.

[*Counsel for petitioner moves to strike out all of the answer after "yes" as irresponsive.*]

×-*Q.* 165. [*Paper shown witness.*] Look at this form which I show you, and say whether you recognize that as a form of charter by Simpson, Spence & Young, steamship agents, of New York? *A.* I have seen hundreds of Simpson, Spence & Young's charters on grain, and I have never seen one on time charter; so I cannot say.

×-*Q.* 166. You have never seen one of their time charter forms before? *A.* No.

×-*Q.* 167. This purports to be one of theirs? *A.* I don't doubt but what it is. They are a very large firm, but do very little in time charters. They do the bulk of the Atlantic business. In other words, they have so many steamers they do not bother much with time charters.

×-*Q.* 168. The provision in this form is that "the owners * * * shall pay for the insurance of the vessel", is it not? *A.* Yes; it

is so stated by them in the charter party — that the owners shall pay for the insurance of the vessel. [*Said paper is marked* "Petitioner's Exhibit 8 for identification, March 18, 1897".]

×-*Q.* 169. You know the firm of Funch, Edye & Company, steamship agents, in New York? *A.* Yes.

×-*Q.* 170. They are large agents here, are they not? *A.* A very large firm.

×-*Q.* 171. They do a good deal of time charter business? *A.* They are my principal competitors. I think they have got twenty steamers on time charter, and we have got about ninety.

×-*Q.* 172. The provision in this form with respect to insurance is that the owners "shall pay for the insurance of the vessel", is it not? *A.* Yes. Funch, Edye & Company's object in putting it in being to show that the owners would pay for the insurance of the vessel, either in stranding, collision, or anything else that is customary.

[*Counsel for petitioner moves to strike out all of the answer after* "yes" *as irresponsive. Said paper is marked* "Petitioner's Exhibit 9 for identification, March 18, 1897".]

×-*Q.* 173. Do you know the firm of J. M. Ceballos & Company, New York, steamship agents and merchants? *A.* I know J. M. Ceballos & Company.

×-*Q.* 174. [*Paper shown witness.*] Do you recognize that as their form of time charter? *A.* I couldn't say. I don't believe that it is the one at present in use.

×-*Q.* 175. This seems to be one of their forms, does it not? *A.* I think they have another one in use today.

×-*Q.* 176. Do you know whether you ever closed one on one of these for them? *A.* I closed so many boats it is impossible to tell. I closed several boats for J. M. Ceballos & Company.

×-*Q.* 177. The provision in this form, whether they use it at present or not, is that the owners "shall pay for the insurance of the vessel", is it not? *A.* Yes. It is adapted from our form of charter, or Funch, Edye & Company's. It consequently shows — the object being for the owners to pay for all insurance on the vessel against stranding, collision, etc., unless they choose to take the risk themselves.

[*Counsel for petitioner moves to strike out the last sentence as irre-*

sponsive. Said paper is marked "Petitioner's Exhibit 10 for identification, March 18, 1897.]

×-*Q.* 178. [*Paper shown witness.*] You recognize this as another one of Simpson, Spence & Young's forms of time charter? *A.* Simpson, Spence & Young do a large time charter business in Europe. There are very few boats that I know of closed on this form on this side of the water. If you will look through the charter you will find it is the United Kingdom form.

×-*Q.* 179. They have an office at Newcastle-upon-Tyne, have they? *A.* Simpson, Spence & Young, and Funch, Edye & Company, are the largest firms in the ship broking business.

×-*Q.* 180. Simpson, Spence and Young, have an office at Newcastle-upon-Tyne, have they not? *A.* I couldn't swear to it; I believe, yes; I know they have one in London.

×-*Q.* 181. And the provision in this form is that the owners "shall pay for the insurance *on* the vessel", is it not? *A.* Yes. They, like other brokers, have adapted that from the other forms of charter — the object being to show that the owners shall pay for all insurance on the vessel.

[*Counsel for petitioner moves to strike out the latter part of the answer as irresponsive. Said paper is marked* "Petitioner's Exhibit 11, March 18, 1897".]

×-*Q.* 182. [*Paper shown witness.*] You recognize this as Funch, Edye & Company's fruit time charter? *A.* Yes. This is Funch, Edye & Company's fruit form of time charter. And this, like all the other charters you have shown me, is not a net form of charter. Besides, this is a fruit form — purely local for our trade.

×-*Q.* 183. The provision in this with reference to insurance is that the owners "shall pay for the insurance *of* the vessel", is it not? *A.* Yes. In this, as in most all time charters, it clearly states that the owners shall pay for the insurance of the vessel. This being as short a way of condensing that the owners shall pay for everything as any broker or steamship agent that I know of can express.

[*Counsel for petitioner moves to strike out all of the answer after "Yes" as irresponsive. Said paper is marked* "Petitioner's Exhibit 12 for identification, March 18, 1897".]

×-*Q.* 184. Do you know John R. Livermore, ship broker, in

New York? *A.* I never knew that he chartered any vessels on time charter.

×-*Q.* 185. [*Paper shown witness.*] This purports to be a form printed by him, does it not? *A.* It is probably adapted from some other broker's form.

×-*Q.* 186. The provision in this is that the owner "shall pay for the insurance *of* the vessel", is it not? *A.* Yes. This charter is doubtless a copy of some other broker's form, as near as I can see; there may be some alteration in the clauses to suit Mr. Livermore's trade. It being clearly the object to show that the owners should pay for all insurance on the vessel.

[*Counsel for petitioner moves to strike out the latter part of the answer as irresponsive. Said paper is marked* "Petitioner's Exhibit 13 for identification, March 18, 1897".]

×-*Q.* 189. [*Paper shown witness.*] Do you recognize this as a further form of Simpson, Spence & Young's, — "G. F. Time Charter, U. S. A."? *A.* This is a cattle form of charter, and not in use in anything else. It has no bearing on the subject except to show that even on this form of time charter the owners "shall pay for the insurance on the vessel". [*Said paper is marked* "Petitioner's Exhibit 14 for identification, March 18, 1897".]

×-*Q.* 188. Are there any other brokers in New York that you recall that print forms of time charters? *A.* Are there any other? There are F. J. Lord, Samuel Holmes, Miller & Houghton, W. W. Battie.

×-*Q.* 189. I mean those who print a form? *A.* They print a form. There are several besides them, and various others that print time charter forms but effect very little business on them; and most all of these are adapted from either Funch, Edye & Company, Simpson, Spence & Young, or our own forms. In other words, they adapt West Indian, Central American and fruit forms from our old form of charter. They adapt cattle forms or some of the European forms from Simpson, Spence & Young; the ore form of charter, etc., from Funch, Edye & Company.

×-*Q.* 190. These forms that I have brought to your attention, including your own, of course, which is in evidence, are the principal forms, are they not? *A.* The chartering on this side of the water is

done, on time, almost entirely by Funch, Edye & Company and ourselves; probably not ten per cent. of the business is done by others. We have at the present time about ninety under time charter; Funch, Edye & Company about twenty; I think Bowring & Archibald have twenty, including what they have in the St. Lawrence, West Indies and European trades. It is a specialty of our firm; whereas they have specialties in grain or other forms of charter with which we do not bother.

×-*Q.* 191. You do not claim to have been the author of clause 22 in your form of time charter which is used in this case, do you? *A.* I adapted clause 22.

×-*Q.* 192. Wasn't the firm of W. W. Hurlbut Company using that form? *A.* I adapted that form to meet the requirements of the trade while a partner in the firm of W. W. Hurlbut & Company some years ago.

×-*Q.* 193. Wasn't the firm of W. W. Hurlbut & Company a firm before you went to it? *A.* It was W. W. Hurlbut before I went to it.

×-*Q.* 194. Hadn't W. W. Hurlbut been using that exact clause before you went to his firm? *A.* I don't think they had. They had no occasion to use it. They had various forms of charter; and all charter parties are altered from year to year as the trade varies.

×-*Q.* 195. Hasn't it struck you that there was no alteration in these insurance clauses in any of these charters that have been brought to your attention today? *A.* I see very little necessity for altering, as it is contained as briefly as possible that the owners pay on, or for, the insurance of the vessel, and have been doing so; and I have never known a case where they asked others to contribute.

×-*Q.* 196. Haven't you noticed that in none of the forms which are brought to your attention was there any provision that the owners should pay for the insurance "*for*" the vessel, but in each case it has been "*of*" the vessel or "*on*" the vessel? *A.* I couldn't positively say. I do notice that you have not shown me one single form of net charter; all admiralty forms; and that this charter of the Barnstable is on the net form; and you have not showed me one. Otherwise you might find the change.

×-*Q.* 197. Don't you notice that the clause in the admiralty

forms is identical with the clause as you have it worded in your net form? *A.* Pretty much so.

×-*Q.* 198. Why did you make any suggestion that there would be any difference if I showed you net forms — difference with regard to this clause? *A.* There would be a difference regarding the other clause. I understand you are now speaking of clauses 11 and 22, both.

×-*Q.* 199. I have not asked you any questions about clause 22 in the last half hour. I have been asking you entirely about the insurance clause. Do you mean to suggest that there is any difference between the form of insurance clause in the net form and in all these forms that I have shown to you today? *A.* There is very little difference in the insurance clause, but there is a world of difference in the other clauses.

×-*Q.* 200. You carry that clause in your charters today, clause 22, in precisely the same form, don't you? *A.* Pretty much the same form — to show that the owners pay for all the insurance of the vessel?

[*Counsel for petitioner moves to strike out the latter part of the answer as irresponsive.*]

×-*Q.* 201. Captain Bennett, I will be obliged to you if you will confine your answers to my questions. *A.* I am trying to.

×-*Q.* 202. You are not trying to. Every time I ask you a question you put in a lot of matter that is not called for. *A.* All right.

×-*Q.* 203. Isn't it a fact that you carry this clause in your net charters today, and in your admiralty charters, in precisely the same form? *A.* Pretty much the same form, with the alteration of the word "on" or "for" in some forms.

×-*Q.* 204. Will you be good enough to send to Mr. Russell any form you have got, or ever have had, in which the word "for" occurred in that clause? *A.* You have got it here: "The owners shall pay *for* the insurance of the vessel" (*witness indicating a paper*).

×-*Q.* 205. "*On*" the vessel, isn't it? *A.* No. "For;" "The owners shall pay *for* the insurance on the vessel." That is the word "for" that I mean.

×-*Q.* 206. You do not mean to say that you have got any form in which there is any provision that the owners shall pay for the insurance *for* the vessel, do you? *A.* I think it would be bad grammar.

×-*Q.* 207. You have used it several times yourself? *A.* It has been in answer to your questions, because I misunderstood you.

×-*Q.* 208. You do not mean to say, then, that it is ever usual to phrase the clause "shall pay for the insurance *for* the "vessel"? *A.* I do not see any necessity of putting it in that way? It doesn't sound right.

×-*Q.* 209. Why won't you answer the questions I put to you? These are straightforward questions. Give me straightforward answers. *A.* I am giving you straightforward answers. Why should I put it "pay for the insurance *for* the vessel"?

×-*Q.* 210. Don't argue with me. Tell me whether it is or not. *A.* I have not, as near as I can recollect, seen it, "that the owners shall pay for the insurance *for* the vessel". I see no necessity for putting it in "*for* the vessel".

×-*Q.* 211. Have you ever seen it put in? *A.* I don't know as I have.

×-*Q.* 212. You have never put it in yourself? *A.* I may have.

×-*Q.* 213. Will you send us any clause in which you have put it in that way? *A.* I will do it. That clause is generally printed and adapted from other charters, as I have before told you.

×-*Q.* 214. Don't you know that that clause, in those identical words, has been in charter parties ever since you were born? *A.* Yes. I suppose they were in charter parties before I was born.

×-*Q.* 215. You don't claim ever to have made any substantial alteration in that clause? *A.* No.

×-*Q.* 216. In adapting it into your charter? *A.* No. The clause is so clear that I see no necessity. I am continually making up new charters, and I adapt certain clauses from other charters.

×-*Q.* 217. Isn't it a fact that there are very few vessels at present chartered on the net form? *A.* The majority of vessels are chartered on the government form of charter.

×-*Q.* 218. Isn't it a fact that there are not ten in this country today chartered on that form? *A.* Oh, I think there must be over

ten. We have seven to the Boston Fruit Company. We have had two to George Crystal.

×-*Q.* 219. What are their names? *A.* We have had two to George Crystal, the Carib Prince and Creole Prince. I think there are about twenty, as near as I recollect. I think I counted up about twenty.

×-*Q.* 220. That means that twenty in all have been made in your experience? *A.* No. There has been —

×-*Q.* 221. You know that the Carib Prince and the Creole Prince have not been running for George Crystal for — *A.* You have got six or seven boats down South for these men that I have not made.

×-*Q.* 222. That you have not made? *A.* That I have not made; but they do it themselves down there. But the form has been used at times to a great extent, more so than at present, especially when our wages here are lower than they are in England.

×-*Q.* 223. You have yourself, apart from the vessels that you have chartered to the Boston Fruit Company, chartered very few vessels on that form in your whole experience, have you? *A.* Very few, or anybody else on this side of the water; but our people on the other side have chartered a great many. There is nobody charters on the net form. The owners won't trust their vessels on that form, unless it is a substantial steamship line, or a heavy corporation with substantial resources. That is about the size of it. I wouldn't charter my boat on net form to a stranger.

×-*Q.* 224. Why not? *A.* For the reason he might feed my crew as he liked.

×-*Q.* 225. Why do you call them your crew? *A.* Well, for the reason that he has got the feeding of the crew and the keeping of the ship in order with that crew.

×-*Q.* 226. Well, it wouldn't make you as uncomfortable as it would the men, if he didn't feed them well, would it? *A.* Not at all.

×-*Q.* 227. What are your objections to it in that form? *A.* Well, I will tell you. My objections as an owner are that in the charter on the net form the boat is taken away from you; I never see it. If I am living on the other side, the men may be lazy, and the charterer, unless a good business man, may not make them work. They won't keep the ship in proper order.

×-*Q.* 228. Can't you require that? *A.* Yes; but I have not time, probably, or money to pay my way over here, and to watch over them every day the same as I would if they were running out of my own port.

×-*Q.* 229. There is a provision in the net form that the owners shall maintain the vessel in a thoroughly efficient state in hull and machinery, isn't there? *A.* Yes.

×-*Q.* 230. What care is that that you referred to as belonging to the charterer? *A.* When the owner is not here to do it, and don't see the men. That is merely my opinion; a good many may prefer to charter on that form.

×-*Q.* 231. Do you know an English firm named Charles Gee & Company, London? *A.* I believe there is such a firm.

×-*Q.* 232. Would you recognize their form of charter if you saw it? *A.* I would not. There are a hundred ship-broker firms on the other side, that I know by hearsay, that have various forms of charter. I have never seen a time charter on their form.

×-*Q.* 233. Do you know the firm of Frank C. Strick & Company Limited? *A.* Never heard of them.

×-*Q.* 234. London, Swansey and Cardiff? *A.* I never heard of them.

×-*Q.* 235. [*Paper shown witness.*] Look at this form which I show you, which purports to be their form, in which clause 1 reads as follows: "The owners shall provide and pay for all oils, paints and deck, cabin and E. R. stores, including water, and all the provisions and wages, and shipping, discharging and other fees of the captain and officers, engineers, firemen and crew; shall pay for the insurance on the vessel against all risks, including protection and indemnity, and freight and demurrage club protection; give charterers full benefit of same, as if they were for the time being owners of the ship; also for all engine-room stores, and ordinary tackle for loading and discharging cargo as required and approved by charterers; and maintain her in a thoroughly efficient state in hull and machinery for the service." Tell me whether you have ever seen that form? *A.* I have never seen it, never heard of the people, and never knew them, and don't believe there ever was a ship chartered on any such form for the American trade. In fact, I am positive of it.

[*Marked* "Petitioner's Exhibit 15 for identification, March 18, 1897".]

×-*Q.* 236. Didn't you, while you were a member of the firm of W. W. Hurlbut & Company, have two boats called the Pirate and the Kenilworth under your supervision? *A.* No.

×-*Q.* 237. Had you nothing at all to do with them? *A.* Not the slightest, or wouldn't have with any such clause as that.

×-*Q.* 238. Did you ever see their charter? *A.* No. Don't want to see it if it is anything like that. I would rather let some other man make the commission.

×-*Q.* 239. Did you have a vessel called the Scythian under your management, or for which you acted as agent, while you were connected with the firm of W. W. Hurlbut & Company? *A.* I think we sold the Scythian to Munson while I was in the firm, but W. W. Hurlbut & Company were agents after I left the firm; I never had anything to do with it.

×-*Q.* 240. Wasn't she under charter while you were with the firm? *A.* Not to my knowledge. If she was I had no hand in the negotiations.

×-*Q.* 241. Did you ever see her charter? *A.* I can't think. I know that after I left the firm she was chartered and also sold by W. W. Hurlbut & Company, and either through the charter or sale, or something, the firm has lost a good many thousand dollars, and I believe at present they are suing her, but I don't know positively. I know that I never had anything to do with the Scythian that I can remember, except I may have had a hand in her sale to Munson years and years ago.

×-*Q.* 242. You cannot say, then, whether either the Pirate or the Kenilworth was chartered on a form which contains a clause similar to the clause I read to you from Exhibit 15 for identification? *A.* I cannot. Probably the business was done by Mr. Hall. But it is a peculiar clause that I have never seen before, and one that I wouldn't care to put in any charter on this side of the water. I prefer to let some other broker do that, and lose my commission.

×-*Q.* 243. What is your objection to it? *A.* I don't like it. I don't take any risk. I don't take any risk for clients, whether owners or charterers. It might be good enough for all I know.

×-*Q.* 244. You recognize that as a different clause from the clause in the American charters? *A.* Yes; it never, to my knowledge, has been used on this side of the water. It may have been used in the vessels you stated; but I will warrant, if used, it was put in for some purpose by a man that was educated on the other side, and that the charters of the steamers never ran through without trouble.

×-*Q.* 245. You have no objection to it except the general one that it is novel and you don't like it, I understand you? *A.* I have no objection, except it has never been used on this side, it is novel, and may cause too much trouble, and I see no necessity for it.

×-*Q.* 246. What had your business been before you went with Hurlbut? *A.* I was shipmaster for years; been to sea prior to that a good many years.

×-*Q.* 247. And was your first experience in Hurlbut's office as a ship broker? *A.* Oh, as master of vessels, and in connection with the sea, I had been dabbling in charters and shipping cargoes for some time previous to that. I have been interested in ships in one way or another all my life.

×-*Q.* 248. Have you any interest in this controversy? *A.* Not in the slightest.

×-*Q.* 249. Are any of the parties interested with you in any way? *A.* None more so than parties in both cases are clients of mine, and friends. I know that my intention was clearly to specify in making the trade between them that the owners should pay for all insurance on the vessel against stranding, collision, or anything else, and I so stated to Mr. Craggs, the then owner.

×-*Q.* 250. Are any of the officers or directors of the Boston Fruit Company interested in your firm? *A.* Our firm is a special partnership firm. We have various owners, charterers, and others as special partners.

×-*Q.* 251. Mr. Preston, the president of the Boston Fruit Company? *A.* Mr. Preston has an interest of one thousand dollars. He does not interfere —

×-*Q.* 252. In your firm? *A.* In our firm, in the slightest way.

×-*Q.* 253. He is a special partner in your firm? *A.* He is special partner in our firm to the extent of $1000. And the owner

of the steamer has far more interest with us, as we are agents for the Brookline, Barnstable, Mexicano; have also closed the Buckingham and other vessels through him; at the present time do all our Newcastle business through him.

×-*Q.* 254. In making these charters, you first, as I understood your testimony, get the instructions of the charterers as to what they will give, what they want, and then approach the owners with offers? *A.* I am a broker. I make my living by chartering ships. If I find a man wants a ship I try to offer him one. If I find an owner has a ship to charter I try to get him a customer. That is my business.

×-*Q.* 255. Who initiated the negotiations between you and Craggs? Who said the first word? *A.* Mr. Craggs was out here years ago, and went to Jamaica.

×-*Q.* 256. I suppose there was not anything said about the Barnstable then? *A.* He then offered to build a boat for the company, but wanted too much money. He sent a model over. She was too slow and too costly. I kept after Mr. Craggs not only on these boats, but on others. I closed a big oil tank steamer with him. His ship builders have negotiated building several vessels, and I naturally go to him if I know he has a vessel open.

×-*Q.* 257. [*Paper shown witness.*] Is that a certified copy of the Barnstable charter? *A.* Yes.

×-*Q.* 258. Is that your signature? *A.* That is Mr. Welch's. [*Said paper is marked* "Petitioner's Exhibit 16 for identification, March 18, 1897".]

EXHIBIT A, MARCH 18, 1897, E. H. C., STEN.

[MEMORANDUM. The printing of this Exhibit A is omitted as it is the same as the Time Charter, Exhibit C, printed on pages 14 to 18. JOHN G. STETSON, *Clerk.*]

DEPOSITIONS OF WITNESSES TAKEN ON BEHALF OF THE PETITIONER.

NEW YORK, May 8, 1897.

Present: Messrs. CONVERS & KIRLIN (*by* Mr. KIRLIN) *for the Petitioner;*

Messrs. RUSSELL & RUSSELL (*by* Mr. C. T. RUSSELL) *for the* BOSTON FRUIT COMPANY.

Same stipulation entered into as made on page 38 of deposition of William H. Bennett, March 18, 1897.

DEPOSITION OF JOHN H. GOURLIE.

Direct Examination by Mr. KIRLIN.

JOHN H. GOURLIE, called on behalf of petitioner, being duly sworn, testifies as follows:

Q. 1. Mr. Gourlie, you are a member of the firm of Johnson & Higgins, New York? *A.* Yes.

Q. 2. And what is their general business? *A.* Average adjusting and insurance.

Q. 3. Marine insurance — insurance on vessels? *A.* Insurance on property generally — vessels, cargoes, etc.

Q. 4. Have you had a good deal of experience on vessels on these and English policies? *A.* Well, I have been in this business about thirty years.

Q. 5. Are you familiar with the ordinary kinds of insurance here and abroad? *A.* Yes.

Q. 6. What is your connection with the insurance of vessels — I mean the connection of your firm? *A.* We are brokers.

Q. 7. Brokers? *A.* Intermediaries between the owners of vessels and the underwriters.

Q. 8. You receive the applications and procure and deliver the policies? *A.* Yes.

Q. 9. Are you able, from your experience, to say whether the

practice of insurance on vessels, in some amount, is of a very general character? *A.* I don't quite catch that.

Q. 10. I will put it in another way. Are you able, from your experience, to say whether or not the practice of insuring hulls, to some extent, is general? *A.* It is the general practice to insure hulls, yes.

Q. 11 (*by* Mr. RUSSELL). I suppose that depends upon the solvency and the wishes of the insured? *A.* Yes; and also upon the wishes of the underwriters — because it takes two to make a bargain.

Q. 12 (*by* Mr. KIRLIN). So that in every case you would naturally expect to find some insurance? *A.* No; I wouldn't want to say that.

Q. 13. Well, generally. *A.* Insurance is a general custom; but in every case it would not follow that you would be justified in expecting insurance.

Q. 14. What is the chief case where you would not expect to find insurance on a hull? *A.* Well, by that I meant that while it is a general practice to insure, everybody does not insure. That is all I meant by that.

Q. 15. Will you produce a copy of the Lloyd's policy on a vessel? *A.* That is a copy I gave you yesterday, which is a Lloyd's policy if you ignore the italics. I suppose, if I had hunted further, I could have found one without the italics (*witness indicating a paper*).

Q. 16. [*Another paper shown witness.*] I show you a sheet which is taken from the second edition of McArthur on Marine Insurance, and ask you whether that is a naked form of the Lloyd's policy? *A.* Yes; that is the customary form of Lloyd's policy commencing "Be it known".

Mr. KIRLIN. I will put those two in, but I will have to reserve leave to keep the original of one, the one on the Westernland, owing to the fact that it is a private document, but it will be produced for the inspection of the court.

Mr. RUSSELL. I am willing that you should substitute a copy.

[*Policy on Westernland marked* "Barnstable Exhibit 17, May 8, 1897".

Extract from McArthur on Marine Insurance marked "Barnstable Exhibit 18, May 8, 1897".]

Cross Examination by Mr. RUSSELL.

×-*Q.* 17. Mr. Gourlie, it is usual, is it not, for a vessel taking out insurance to take insurance against running down? *A.* I think that insurance commonly, when taken, is taken including running down.

×-*Q.* 18. And when a vessel is fully covered you would expect that she would be covered against the running down risk? *A.* Against a portion of the running down risk.

×-*Q.* 19. That is three quarters, I presume? *A.* Yes, that is it.

×-*Q.* 20. Isn't it, as matter of fact, now customary to insure the other remaining one quarter? *A.* No. It is done, but it is not a customary thing.

×-*Q.* 21. So that when you speak of a policy of insurance on a vessel you would understand that it covered at least three quarters of the running down? *A.* Well, no. Answering that question I don't think that I would. But if I were asked what I would expect to find in a full insurance on a vessel (which was the question, the way you put it before), I should answer that I would expect to find that it included the three quarters collision clause.

×-*Q.* 22. And the other one-quarter would remain on the vessel? *A.* Uncovered, as a rule.

×-*Q.* 23. Mr. Gourlie, don't you know, as matter of law, that where a vessel is insured against marine risk, that marine risk includes running down? *A.* I know as matter of law that it does not.

×-*Q.* 24. What law do you refer to? *A.* I refer to the English law; and I refer to the Supreme Court decision of the United States overturning the previous rule laid down in Peters against Warren, by Judge Story.

×-*Q.* 25. You do not recognize as law the decision of the Supreme Court of Massachusetts? *A.* No; unless we are limited to that forum.

×-*Q.* 26. Where a charter party provides that the owner shall pay for the insurance on the vessel, would not that, in your opinion, include all insurance? *A.* No.

×-*Q.* 27. You think there would be something left— *A.* (*interrupting*). Theoretically, all possible insurance —

×-*Q.* 28. [*Interrupting.*] I mean against the running down.

Mr. KIRLIN. I object to that as a matter for the court.

Mr. RUSSELL. I understand all this evidence is subject to objection.

A. I understand your question. Would I not argue that that clause obligated —

×-*Q.* 29. [*Interrupting.*] I am not asking you to argue; I am asking your opinion as an expert. *A.* I beg pardon. Would it not be my opinion —

×-*Q.* 30. [*Question repeated.*] Where the charter party provides that the owner shall pay for the insurance on the vessel, would not that, in your opinion, include all insurance? *A.* No.

×-*Q.* 31. What would not be included? *A.* I do not think that the four-quarters collision would be included in it.

×-*Q.* 32. That is, under that clause in the charter party, in your opinion, the ship owner would insure against the loss of the vessel, and the charterer would insure against her running down? *A.* No; I didn't mean that either.

×-*Q.* 33. Will you please explain, then? *A.* Under that clause I should not expect that the owner of the vessel would insure against everything. For instance, I should not expect to find that he would insure against more than three-quarters collision?

×-*Q.* 34. You would expect him to insure to the extent of three quarters? *A.* Yes; that is my feeling on the subject.

×-*Q.* 35. Mr. Gourlie, in your large and extended experience, have you ever known a case where a ship owner, agreeing to pay for insurance, has made a claim upon a charterer for a running down — for a collision loss? *A.* To me that is novel.

×-*Q.* 36. I am asking you. You answer my question that in your opinion, or in your experience, that is a perfectly novel idea? *A.* I don't know whether it is a novel idea. I have never known it to be done.

Re-Direct Examination by Mr. KIRLIN.

Q. 37. Does the matter of adjustment of liability as between charterer and owner ever come before you as a practical matter? *A.* Yes.

Q. 38. Any liabilities for running down through the neglect of the charterer's servants? *A.* I never have had that question come up before me.

Q. 39. That is the question we have here? *A.* I never have had this question come up before me.

Q. 40. What is the form of the so-called running down clause? Would you like to take it from this book? [*Book shown witness.*] *A.* Yes. I can pretty nearly remember it, but still — It in effect provides that if the vessel hereby insured shall come into collision with any other ship or vessel, and if the insured shall in consequence thereof be held liable to pay and shall pay, then we, the insurers, agree to pay three quarters of the sum so paid, not exceeding the sum insured. Then there is a provision in continuation as to the costs of litigation; and there is a provision as to the result of cross libels and cases of mutual fault; and then there is a provision that this policy does not include loss of life, or personal injuries or obligations to pay for the removal of wrecks, or statutory powers, and things of that sort.

×-*Q.* 41 (*by* Mr. RUSSELL). You are speaking now entirely of the English policy? *A.* I am speaking not only of the English policy, but of the common form of clause made use of in this country for insuring against collision or running down. Years ago there was a clause that the underwriter was liable for collision, according to the decisions of the State courts of Massachusetts, prior to 1853. That clause is obsolete.

Q. 42 (*by* Mr. KIRLIN). That does not include, then, the liability for death caused by running down nor personal injuries? *A.* No; it does not include death, nor personal injuries, nor the expense of removing a wreck.

Q. 43. Is that clause similar in substance in the American policies? *A.* Well, the custom now is to use in America practically the same clause that is used in England; for the reason that the field for insurance for American underwriters is so limited that a large part of the business on hulls, if done in America at all, is done largely with English agencies in America; so that that clause is in common use.

Q. 44. Now tell us whether the insurance with the running down

clause entails an extra premium over insurance on vessel a under the ordinary form. *A.* Certainly it does. The more you buy the more you have to pay for.

Q. 45. It entails an extra premium? *A.* Yes.

Q. 46. Is the practice of insuring with the running down clause attached as general in the United States as it is in England? *A.* No.

×-*Q.* 47 (*by* Mr. RUSSELL). Do I understand that it is more frequent in England than in this country to insure against running down? *A.* More general in England than here.

×-*Q.* 48. You mean by that, more general with an English vessel? *A.* Yes, I do exactly. I should be much more surprised to find an English vessel not insured with the running down clause than I would be to find an American vessel not insured with a running down clause.

Q. 49 (*by* Mr. KIRLIN). If an insurance with a running down clause is taken to Lloyd's, how is that connected with the Lloyd's policy, such a form on vessels as you have produced, Exhibit 17? *A.* They usually put a printed slip or rider, as it is called, upon the policy; and I would say that I have never seen the rider in the customary form as used in England that did not have the words in print, and the erasure of Lloyd's three quarters to cover four quarters; they erase with pen and ink the words "three quarters". They do not have any printed clause with those words omitted; showing that the usage is three quarters rather than the whole.

Q. 50. What is the object of that? *A.* The theory originally was that as the loss under that clause was only created through negligence, the underwriter wanted to make the owner particularly careful, and therefore he refused to extend to him entire protection, leaving him one quarter unprotected. But that purpose of the underwriter is frequently set at naught by a man going elsewhere and getting that one-quarter protection.

Q. 51. By "elsewhere" what do you mean? *A.* To another underwriter.

Q. 52. What is the practice about including the running down clause in American policies? Is it a rider, or on a separate form of policy, or in the ordinary policy? *A.* It is usually a rider. Some

underwriters, however, doing a large business, have enough forms to meet the exigencies of their business, and they will give you a form particularly prepared to insure vessels with the running down clause, and then they have it all on one policy without any rider. Other companies never issue it as a rider, but issue it as a distinct and separate contract; so that if you want insurance without collision you get one policy; if you want collision, you get another; if you want both, you get two.

Re-Cross Examination by Mr. RUSSELL.

×-*Q.* 53. In the case of an English vessel, if I understand you, taking out insurance, you would expect that insurance to cover three quarters of the running down? *A.* I would if I was told that they were seeking full insurance.

×-*Q.* 54. Full insurance would imply, of course, insurance against running down as well insurance against other loss? *A.* Full insurance would imply insuring three quarters running down as well as other loss.

×-*Q.* 55. Simple insurance would imply that? *A.* No. It would prompt an inquiry, I think. If you asked me to procure insurance on your hull, and you told me the amount and her name and her tonnage and her voyages, and her valuation, and all that, I would have to ask you the question, "Do you want the running down clause included"?

×-*Q.* 56. And that question would be equivalent to asking me whether I wanted full insurance? *A.* Yes; full in the ordinary acceptation of the word.

×-*Q.* 57. But an English vessel would not be fully covered unless she was insured against running down? *A.* No; in the true sense of the word, "fully", I don't think that she would.

×-*Q.* 58. Do you know anything about this steamer Barnstable? *A.* I didn't even know the name of the vessel until you mentioned it to me.

×-*Q.* 59. I am going to put to you a question that you may not then be able to answer. I am going to ask you what the premium for insurance would be on such a vessel at that time. *A.* I have no idea. I am not on that side — I am not in that part of the business;

I don't myself deal with the buying of insurance; I deal with adjusting matters.

×-*Q.* 60. Can you answer this question: What would be the difference in premium between insurance against the mere perils of the sea, and insurance including running down? *A.* I would not be an expert on that. I could guess at it.

×-*Q.* 61. What is your guess? *A.* May be one-quarter of the premium or one-fifth of the premium.

×-*Q.* 62. That is, it would increase the premium twenty or twenty-five per cent? *A.* Yes. I am far from being an expert on that.

[*Signature of witness waived.*]

DEPOSITION OF RAMON G. CADIZ.

Direct Examination by Mr. KIRLIN.

RAMON G. CADIZ, called on behalf of petitioner, being duly sworn, testifies as follows:

Q. 1. Mr. Cadiz, are you connected with the firm of Funch, Edye & Company? *A.* Yes.

Q. 2. What part of the business do you have charge of? *A.* Time chartering of West Indian business, Brazil business — the chartering for those trades.

Q. 3. How long have you had charge of that department? *A.* Since 1888.

Q. 4. How long have you been with the firm? *A.* Since June, 1876.

Q. 5. And is that the extent of your experience as a ship broker? *A.* That is the extent of my business career. I have never been in any place else.

Q. 6. [*Paper shown witness.*] Is this a copy of the time charter of your firm? *A.* Yes. That is our regular government form of time charter. [*Said paper offered in evidence and marked* "Barnstable Exhibit 19, May 8, 1897".]

Q. 7. I notice in that charter party a provision in the first numbered paragraph reading, "The owner shall pay for the insurance

of the vessel". Is that a usual clause in all time charters? *A.* Yes.

Q. 8. How does that clause come to be there?

Mr. RUSSELL. If he knows.

A. It is one of the clauses introduced for the purpose of establishing that the owner must pay the insurance on the vessel.

Q. 9. What is the occasion for enumerating that as a charge against the owner? *A.* Well, if it was not there, the charterer might, under paragraph No. 2, be called upon to pay the insurance on the vessel, on the strength of the clause stating that all other charges whatsoever, except those before stated, are to be for account of the charterers.

Q. 10. Is it generally recognized as a commercial matter that there is a regular charge for insurance? *A.* It is generally recognized that where a vessel insures, of course —

Q. 11. [*Interrupting.*] It would be charged for? *A.* It would be charged for. I never knew anything to the contrary.

Q. 12. And it is specified always who is to pay for it? *A.* It is.

Q. 13 (*by* Mr. RUSSELL). Insurance is not given away? *A.* No.

Q. 14 (*by* Mr. KIRLIN). And this is a specification as to who is to pay for it? *A.* Yes.

Q. 15. Is there any customary or trade meaning to those words, "The owner shall pay for the insurance on the vessel", which differs in any way from the ordinary meaning of the words? *A.* None whatever. Just the literal sense in which the expression is made use of there.

Cross Examination by Mr. RUSSELL.

×-*Q.* 16. Mr. Cadiz, that expression, I suppose, as is self-evident, means that the owner of a vessel is to assume, and therefore insure against, every risk that the vessel is likely to encounter?

Mr. KIRLIN. I object to that as inviting his conclusion on a matter of law.

A. Well, that is a hard question for me to reply to.

×-*Q.* 17. What is the difficulty there? *A.* I don't quite understand the import of it. Will you kindly read that again?

×-*Q.* 18. [*Question repeated.*] *A.* I should think so. If an

owner does not insure against it he assumes the liability for it himself — any liability for which his vessel is responsible.

×-*Q.* 19. And he relieves the charterer from that liability, does he not? [*Objected to as incompetent and as asking for a conclusion.*] *A.* I cannot say whether he would relieve him or not. That is beyond my knowledge of the insurance business.

×-*Q.* 20. Where a ship owner lets out his vessel on a time charter, and agrees in that charter that the ship owner shall pay for the insurance on the vessel, have you ever known a case where he has sought to recover from the charterer for a collision loss? *A.* No, I never knew of a case.

Re-Direct Examination.

Q. 21. Have your ever known of a case where that point was involved? *A.* No.

Q. 22. Has that ever come before you as a practical matter? *A.* It never came before me as a practical matter.

[*Signature of witness waived.*]

DEPOSITION OF JAMES R. HALL.

Direct Examination by Mr. KIRLIN.

JAMES R. HALL, called on behalf of petitioner, being duly sworn, testifies as follows:

Q. 1. Mr. Hall, with what firm are you? *A.* J. M. Ceballos & Company.

Q. 2. Were you formerly a member of the firm of W. W. Hurlbut & Company? *A.* I was.

Q. 3. When did you join that firm? *A.* About 1882.

Q. 4. How long have you been in business as a ship broker altogether? *A.* Since 1872.

Q. 5. Where before 1882? *A.* In Antwerp.

Q. 6. When did the firm of W. W. Hurlbut & Company cease to exist? *A.* It ceased to exist about December last year.

Q. 7. Were you and Bennett, who has been previously examined, formerly partners with Hurlbut? *A.* Yes.

Q. 8. And your firm separated when? *A.* In July, 1895, I think it was.

Q. 9. And then the firm of Bennett, Walsh & Company was formed? *A.* Yes.

Q. 10. And you continued business under the old name? *A.* Yes.

Q. 11. With whom? *A.* With W. W. Hurlbut.

Q. 12. Your old firm and the later firms had done the largest net chartering business in this port for some years? *A.* Yes.

Q. 13. [*Paper shown witness*]. Do you remember where this form which was used by W. W. Hurlbut & Company, and which has been marked as "Petitioner's Exhibit 16 for identification," was taken from, or by whom it was drawn up? *A.* I drew the form up myself.

Q. 14. Where from? *A.* From a copy of the time charter form of Messrs. Lambert & Holt, and also based on the charters made of the steamer Scythian and the steamers Pirate and Kenilworth.

Q. 15. When was this form drawn up by you? *A.* That form was drawn up shortly after we chartered the Scythian. That would be about 1886 or 1887, — somewhere about that time.

Q. 16. Referring to clause 22, that the owners shall pay for the insurance on the vessel, has that clause any commercial or trade significance differing in any way from the ordinary meaning of the word? *A.* No.

Q. 17. How does that clause come to be in the charter parties? Do you know? A. It is simply there so that if the owner wishes to protect himself he can do so by insuring the vessel.

Q. 18. Is there any commercial or trade understanding that the charterer is to have any benefit of such insurance? *A.* None at all.

Q. 19. Has the matter of the adjustment of liabilities as between owners and charterers on net form, where the charterers have furnished their own crew, ever come up for practical determination before the firm of W. W. Hurlbut & Company during the time that you were with it? *A.* No.

Q. 20. The matter as to mutual liabilities, or the significance or trade meaning of the insurance clause, was that ever up for consideration? *A.* No; not as regards the insurance point.

Q. 21. Do you notice in the third numbered clause the provision that the charterer shall pay "all other charges whatsoever" excepting those enumerated to be paid by the owner? *A.* Yes.

Q. 22. Is the charge for insurance an ordinary charge on all vessels? *A.* No. The owner is not bound to insure; he is not bound to.

Q. 23. What is the common practice? *A.* I should say most owners do insure.

Q. 24. And there is generally a charge to be borne by somebody, is there, for insurance premiums? *A.* It is naturally to be borne by the owner, if he thinks well to do so.

Q. 25. Is there any understanding or trade meaning attached to this phrase which imposes any obligation on the owner to insure? *A.* None at all.

Q. 26. Is there a well-known clause in charter parties to meet the case of an owner insuring for the benefit of a charterer if the charterer desires or requires it? *A.* I have seen such clauses.

Q. 27. Have you seen them in net forms? *A.* No; I have not seen them in net forms.

Q. 28. Have you seen them in any time forms? *A.* I have.

Q. 29. What steamers? *A.* I have seen some of the forms printed. I have never had any charter with it in.

Q. 30. Have you chartered any boats as broker that contained the insurance clause in a different form from what it was in the old Hurlbut net form? *A.* No; none at all.

Q. 31. Your clause has always stood in that form, has it? *A.* It has stood in that form.

Q. 32. Have you chartered any vessels on different forms in which the insurance clause was different? I mean to ask you about the Pirate and the Kenilworth. *A.* Those are the only two boats that I remember.

Q. 33. How about the insurance clause there, if you remember? *A.* The printing of it?

Q. 34. No, the way it was. *A.* If I remember rightly, it specially stipulated that the boats were to be kept insured, and that any damage done to the vessel over one hundred and twenty pounds, which was not covered by the policy; but any damage over one

hundred and twenty pounds recovered under the insurance policy, the charterers were to have the benefit of the insurance.

Q. 35. And how about the one hundred and twenty pounds? *A.* If the damage did not amount to that, then the charterers had to pay for the damage.

Q. 36. Do you know the firm of Frank C. Strick & Company, Limited, of London, Swansey, Cardiff, and Newport, England? *A.* Very well.

Q. 37. Is that an old firm? *A.* The firm has been in existence for some years.

Q. 38. Do you know Mr. Strick? *A.* I know Mr. Strick personally.

Q. 39. What has his experience been? *A.* Mr. Strick's has been for the last thirty or thirty-five years.

Q. 40. [*Paper shown witness.*] Look at the clause in his form of charter party, which was marked "Petitioner's Exhibit 15 for identification," and say whether the provision there about insurance and giving the charterers the benefit of it is the clause that you had in mind in testifying that when it was intended the charterer was to have the benefit of the insurance it was so stated? *A.* Yes; I have seen similar clauses.

Q. 41. You have seen that in other forms also? *A.* Yes.

Cross Examination by Mr. RUSSELL.

×-*Q.* 42. Mr. Hall, if I understand you, you prepared this form of charter party? *A.* Yes.

×-*Q.* 43. When did you prepare it? *A.* I think it was about 1884 or 1886. I could not remember the date exactly.

×-*Q.* 44. Is it prepared especially for British vessels? *A.* It was prepared for any vessels which were being chartered — not for British alone, but we had previously chartered American vessels as well.

×-*Q.* 45. And I suppose I may assume that you prepared it carefully? *A.* Well, to the best of our ability.

×-*Q.* 46. And in preparing it as a commercial document, you meant that every clause and word of it should have some meaning? *A.* Naturally.

×-*Q.* 47. And when in clause 10 you provided that the charterer was to indemnify the owner from all consequences or liabilities that may arise from the master signing bills of lading, you intended to that extent to put the liability upon the charterer and to relieve the owner, did you not? *A.* Allow me to look at the clause, please. Certainly, from signing bills of lading.

×-*Q.* 48. You thought that provision was necessary, did you not? *A.* No. As a matter of fact, it does not protect the owner — even the master signing the bills of lading in that way.

×-*Q.* 49. I am not asking you exactly that; my question is whether or not, when you put that clause into the charter party, you did not mean to define the extent of the liability as ship owner and limit it? *A.* No.

×-*Q.* 50. Well, what did you mean by the words? *A.* Well, I can't exactly say that it was any more than a common phrase used in making time charters.

×-*Q.* 51. But it was used for a purpose, wasn't it? *A.* Well, just the ordinary way that these forms have been drawn up. It is for the Court to decide as to the liability.

×-*Q.* 52. But, as a commercial man and a ship broker, you understand the English language, do you not? *A.* We try to the best of our ability to.

×-*Q.* 53. When you use it in a commercial contract you use it to mean something? *A.* We try to.

×-*Q.* 54. And the meaning was to that extent that the liability of the owner was limited? *A.* As far as the bills of lading were concerned.

×-*Q.* 55. Exactly. Now, when you drafted the insurance clause, you intended, did you not, that the owners, in paying for the insurance, should either insure or assume the liability? *A.* Oh, no. I have known cases where boats have been chartered on such a form and where the owners did not insure.

×-*Q.* 56. I do not make my question, perhaps, clear. The owner either insures or assumes the liability, doesn't he? *A.* Not necessarily.

×-*Q.* 57. When the charter party provides that the owner shall pay for the insurance on the vessel, doesn't it mean that the risk is on the owner? *A.* It doesn't say that he is to insure.

×-*Q.* 58. I do not claim that it does. But isn't the risk on the owner? [*Objected to as a conclusion.*] *A.* I can't see why it should be, because it is his option whether he insures or not.

×-*Q.* 59. When the charter party provides that the owner shall pay for the insurance on the vessel, do you understand that the owner has any insurable interest? [*Same objection.*] *A.* That is entirely an owner's option.

×-*Q.* 60. You do not understand my question. *A.* Well, it is for an owner to decide what he is to do. I cannot assume what an owner would do.

×-*Q.* 61. I am asking you as the man who drafted this contract, and I assume that you knew what you were doing when you used the English language. Did you or did you not assume from that, when you drafted it, "that the owner should pay for the insurance on the vessel", that the owner retained an insurable interest? *A.* No. It was left entirely to an owner whether he insured or not; it was his option.

×-*Q.* 62. You do not understand my question. Did the owner have an insurable interest? *A.* Oh, he had an interest he could insure if he wished.

×-*Q.* 63. Now, what was that interest? *A.* I suppose he might insure the value of the ship.

×-*Q.* 64. And insure her against running down? *A.* Not necessarily.

×-*Q.* 65. I am not asking whether it was necessary to do it, but was not that an insurable interest he had in her? *A.* He could do so.

×-*Q.* 66. He had an insurable interest for that purpose? *A.* He could do so. He could insure that interest if he wanted.

×-*Q.* 67. And he had that interest to insure if he wanted to? *A.* Oh, decidedly.

×-*Q.* 68. Now, Mr. Hall, have you ever known a case where a ship owner, having agreed to pay for the insurance on the vessel, made a claim on the charterer for any damages suffered by running down? *A.* No.

Re-Direct Examination.

×-*Q.* 69. Have you ever known of this coming up at all as a practical matter? *A.* No.

[*Signature of witness waived.*]

DEPOSITION OF HERBERT BARBER.

Direct Examination by Mr. KIRLIN.

HERBERT BARBER, called on behalf of petitioner, being duly sworn, testifies as follows:

Q. 1. Mr. Barber, how long have you been in the business of steamship agent and broker in New York? *A.* Sixteen years.

Q. 2. What is your firm? *A.* Barber & Company.

Q. 3. How long have you been in the shipping business altogether? A. Thirty-five years probably.

Q. 4. Whereabouts before you came to New York? *A.* Liverpool.

Q. 5. [*Witness is shown Petitioner's Exhibit 7 for identification.*] Is that your form of time charter? *A.* That is one of our forms of time charter, yes.

Q. 6. I notice in the clause numbered 1, in that form, a provision that the owners shall pay for the insurance of the vessel. Is that the usual form that is in all time charters? *A.* That is the usual clause.

Q. 7. And the form of it? *A.* Yes.

Q. 8. Do you know Hurlbut & Company? *A.* I used to know them.

Q. 9. Look at clause 22 in their form and say whether that is the same clause and in the same form? *A.* It is the same clause, but not in the same sequence.

Q. 10. Not in the same sequence? *A.* No.

Q. 11. But the same in words, is it not? *A.* Yes; same exact words.

Q. 12. How does that clause come to be in time charters? *A.*

You know in most time charters there is a clause about what each shall pay for. The owners shall pay for the provisions, wages, fees of the captain, officers and crew; and then the next clause is, the charterer shall provide and pay for all the coals, port charges, pilotages, commissions, consulate fees except those pertaining to the captain, officers and crew, and all other charges whatsoever; and for that reason, under clause 1, they provide that the insurance of the vessel is to be paid by the owners.

Q. 13. That being a usual charge on all vessels? *A.* Insurance is a usual charge; yes.

Q. 14. Is there any trade meaning or interpretation of that clause, differing in any way from the ordinary meaning of the words? *A.* Not that I am aware of.

Q. 15. Is there any trade meaning or interpretation to the effect that charterers shall have the benefit of any of the owners' insurance? *A.* Well, that means that if the steamer is not insured, any benefit that the charterers might derive under certain claims. However, you will notice that better in some of the other charters that are around, where that clause is more fully expressed.

Q. 16. In the form in which you have it, does the charterer by any common usage get any benefit of the owner's insurance? *A.* No; I don't think so. No.

Q. 17. Now, if the charterer desires the benefit of the owner's insurance, is there a provision for that made? *A.* In some charters it is made.

Q. 18. Do you know the firm of Strick & Company, of London and Swansey? *A.* I know them by reputation.

Q. 19. Look at the clause numbered 1 in their form, and say whether that is the clause you referred to as being where the charterer is to have the benefit of the insurance. [*Witness is shown Petitioner's Exhibit* 15 *for identification.*] *A.* That is a pretty strong clause; yes.

Q. 20. And so far as your experience goes there is no trade meaning or interpretation of the ordinary clause that the owner shall pay for the insurance of the vessel differing in any way from the plain meaning of the words? *A.* Not that I am aware of.

Cross Examination by Mr. RUSSELL.

×-*Q.* 21. That is, if I understand you, Mr. Barber, where the owner agrees to pay for the insurance he has the benefit of the insurance? *A.* That is so; yes.

×-*Q.* 22. And if the charterer is to have any interest in that insurance it must be so provided expressly? *A.* That is my understanding of it; yes.

×-*Q.* 23. And the owner paying for the insurance would be supposed to assume the risk and insure himself, wouldn't he? [*Objected to as a conclusion.*] *A.* That is so; yes.

×-*Q.* 24. And that is the commercial meaning of the expression in the charter party that the owner shall pay for the insurance of the vessel? *A.* That is as I understand it.

×-*Q.* 25. Have you ever known a case where a time charter party provides that the owner shall pay for the insurance on the vessel, and where the owners have made any claim against the charterer for a running down loss? *A.* I have not known of such a case; no.

Re-Direct Examination.

Q. 26. Have you known of any case where a vessel has been run down through the negligence of the charterer's master? *A.* I don't know of a case.

Q. 27. Then that question has never come up before you for practical determination? *A.* It has not; no.

[*Signature of witness waived.*]

From said March Term, A. D. 1897, this libel was continued from term to term to the December Term thereof, A. D. 1897, when on the twenty-fifth day of January, A. D. 1898, it was ordered by the Court that the statutory continuance be vacated, and the case restored to this term.

From said December Term, A. D. 1897, this libel was continued to this present term, when on the seventeenth day of March, A. D. 1898, the following final decree was entered by the Hon. Arthur L. Brown, District Judge for the District of Rhode Island, duly assigned to hold the District Court for this district.

FINAL DECREE.

This cause came on to be heard, and an interlocutory decree having been entered therein, according to the opinion on file, it is now hereby ordered, adjudged and decreed in the above libel and petitions that judgment be entered for the following libellants and petitioners against the steamship Barnstable for damages in the following amounts:

Libellants, A. G. Hall *et al.*, damages,	$14,055 00	
Interest from January 1, 1897, to March 10, 1898	1,004 93	
Total		$15,059 93
Petitioner, Arthur W. Nunan, damages,	$2,095 00	
Interest from January 1, 1897, to March 10, 1898	149 79	
Total		$2,244 79
Petitioners, Harold Emerman *et al.*, Admrs. *et al.*, damages	$2,850 00	
Interest from January 1, 1897, to March 10, 1898	203 78	
Total		$3,053 78
Petitioner, Israel B. Stewart, Admr., damages	$475 00	
Interest from January 1, 1897, to March 10, 1898	33 96	
Total		$508 96
Total		$20,867 46

It is further ordered, adjudged and decreed that judgment be entered for said libellants and petitioners against the steamship Barnstable for costs as taxed by the clerk in the sum of $69.65 dollars.

It is further ordered, adjudged and decreed that the petition of the Turret Steamshipping Company, Limited, against the Boston Fruit Company be dismissed with costs, and that judgment be entered for said Boston Fruit Company for costs as taxed by the clerk in the sum of $69.30.

And it is further ordered, adjudged and decreed that unless the amounts hereinbefore set forth of the respective judgments both for

costs and damages shall be paid to said parties or their proctors of record by the said steamship Barnstable, or her owner or claimant, within ten days from the date hereof, or unless further proceedings shall have been stayed by appeal or by other order of this court before the expiration of said ten days, then execution shall issue for said amounts against the claimant and its stipulators for costs and value.

On the twenty-fifth day of March, A. D. 1898, the following prayer for appeal and assignment of errors were filed in the clerk's office, viz:—

PRAYER FOR APPEAL.

The Turret Steamshipping Company, Limited, claimant for the steamship Barnstable, and petitioner against the Boston Fruit Company in the above-entitled proceedings, considering itself aggrieved by the final decree of this Court made and entered in this cause, on or about the seventeenth day of March, 1898, hereby appeals from said final decree and decision to the United States Circuit Court of Appeals for the First Circuit, and herewith files an assignment of errors, as required by law.

And thereupon said Turret Steamshipping Company, Limited, prays that its said appeal may be allowed, and that a transcript of the record, testimony, proceedings and papers on which said final decree was made may be sent up, duly authenticated, to the said United States Circuit Court of Appeals for the First Circuit, and that a citation in due form be issued, citing the petitioning libellants and the said Boston Fruit Company to appear in answer to the said appeal.

TURRET STEAMSHIPPING COMPANY, LIMITED,
by CONVERS & KIRLIN, *its Proctors.*

ASSIGNMENT OF ERRORS.

The Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, and petitioner against the Boston Fruit Company, assigns error to the final decree and decision of the District Court herein, in the following particulars:

First. For that the Court held that the rights of the parties, as between the steamship and the charterer, were not to be determined with reference to the law of bailments.

Second. For that the Court held that the twenty-second clause of the charter party was an unequivocal expression of an intention that the steamship, as between her owner and the charterer, should assume and relieve the charterer from all risks that would be covered by "the insurance on the vessel" for which the owner was to pay.

Third. For that the Court held that the twenty-second clause of the charter party, which provided that the owner should pay for the insurance on the vessel, required the owner to arrange for and obtain insurance on the vessel, or, if it failed so to do, to be liable, as between it and the charterer, for all risks which would have been covered by such insurance, even though occasioned by the negligence of the charterer's servants.

Fourth. For that the Court held that the undertaking of the owner, under clause 22 of the charter, to pay for the insurance on the vessel, required the owner to obtain insurance, not only on the vessel herself, but against running down risks, including loss of life and personal injury in such amount as would fully relieve the charterer from any claim for damage caused by the steamship to a third vessel, or for any loss of life or personal injury claims arising from such running down, even though occasioned by the negligence of the charterer's servants.

Fifth. For that the Court received evidence in support of the contention that the undertaking of the owner, under clause 22 of the charter party, to pay for insurance on the vessel, required the ship owner to insure, as between it and the charterer, against claims for damage done by the vessel to another vessel, and for personal injury and death claims arising from such running down, caused by the negligence of the charterer's servants.

Sixth. For that the Court received and gave weight to the evidence of William H. Bennett, that he had expressed to a former owner of the vessel, at the time the charter party was made, that he would have to pay for all insurance on the vessel in any way, shape and manner, against strandings and collisions, and everything, as is usually done on all vessels, unless he wanted to take the risk and

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not insure, when the evidence showed that the ownership of the vessel had changed from the hands of the owners referred to by said Bennet into the hands of the said Turret Steamshipping Company, Limited, which was not shown to have had any knowledge of such statement to the former owner.

Seventh. For that the Court held that other clauses of the charter party indicated an intent on the part of the owner to assume, as between it and the charterer, the risk of all consequences of collision, caused by the negligence of the charterer's servants.

Eighth. For that the Court held that although evidence of custom could be received to show that an insurance "on the vessel" contemplated an insurance against claims arising from injuries inflicted by the vessel upon a third vessel, or upon persons on board thereof, yet the evidence that such custom was to insure only three quarters of such risks does not affect materially the intention of the parties concerning the risks which the ship owner was to pay for and insure against.

Ninth. For that the Court held that clause 22 of the charter party was the legal equivalent of a clause requiring the owner to pay for the insurance on a vessel against all risks, including protection and indemnity and freight and demurrage club protection, and to give the charterer the full benefit of the same, as if it was, for the time being, owner of the ship.

Tenth. For that the Court held that under clause 22 of the charter party the owner agreed to insure against and to bear the risks of liability for damage to third vessels and to persons on board thereof, which might arise from or be caused by the negligence of the charterer's servants.

Eleventh. For that the Court held that the owner had received compensation from the charterer for the risk of damage caused to third vessels, or to persons on board thereof, by reason of the negligence of the charterer's servants.

Twelfth. For that the Court refused to enter a decree under the intervening petitions of Emernan and others, administrators, and Stewart, administrator, against the Boston Fruit Company, as well as against the "Barnstable".

Thirteenth. For that the Court refused to enter decrees pursu-

ant to the provisions of the fifty-ninth rule, in all the cases, against the Boston Fruit Company, as well as against the Barnstable, containing a provision that, as between the steamship owner and the charterer, the decrees should be paid by the charterer, and permitting recovery against the Barnstable and her sureties only in the event of the inability of the libellants to collect their damages from the Boston Fruit Company, charterer.

Fourteenth. For that the Court omitted and refused to enter a decree in accordance with the prayer of the petition of the Turret Steamshipping Company, Limited.

CONVERS & KIRLIN,
Proctors for TURRET STEAMSHIPING COMPANY, LIMITED,
Appellant.

From the foregoing decree, the respondents having claimed an appeal to the United States Circuit Court of Appeals for the First Circuit, no appeal bond being required by the Court, both parties consenting, on this twenty-fifth day of March, A. D. 1898, said appeal is allowed by the Court.

A true record:

Attest: FRANK H. MASON, *Clerk.*

DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS.

IN ADMIRALTY.

A. G. HALL ET AL. *v.* THE STEAMSHIP BARNSTABLE.

PETITION OF THE TURRET STEAMSHIPPING CO., L'T'D (*Owner*)
v.
THE BOSTON FRUIT COMPANY (*Charterer*).

OPINION OF THE DISTRICT COURT.

JANUARY 25, 1898.

BROWN, J. In the controversy between the owner and charterer it is assumed that the Barnstable is liable *in rem* for a total loss of the fishing schooner Fortuna in a collision caused by the fault of

those in charge of the navigation of the Barnstable. It is agreed that the master, officers, engineers, firemen and crew of the steamer had been appointed by the charterer, and were paid by the charterer pursuant to the charter party.

It is also agreed that "the collision was caused by the negligence of master, mates or crew at the time in charge of the navigation of the steamship."

The result sought by the owner is thus stated upon the brief supporting the petition upon which the charterer has been cited in by the owner.

"A decree should be entered for the libellants against the Barnstable and the Boston Fruit Company (the charterer), for the damages sustained; but the decree should provide that the damages be collected in the first instance from the charterer, and that only the amount not so collectible be paid by the ship; and the decree should further provide for a recovery over against the charterer in favor of the ship owner, of any amount it may have to pay; and the ship owner should recover costs."

Without dwelling upon the grounds for doubting the right of the owner, who has appeared as claimant in a proceeding *in rem*, to proceed by petition against the charterer in this a cause of collision, and merely recording a doubt of the propriety of the practice in view of Admiralty Rule 15, and of the express limitation of Rule 59, we will examine only those questions that have been argued.

I am of the opinion that the owner has satisfactorily sustained its contention that the charter party vested the possession, command and control of the vessel in the Boston Fruit Company and its servants, and that the navigation of the vessel was the charterer's business.

The main question, therefore, is, were the relations between the owner and the charterer such as to impose upon the charterer the obligation to indemnify the owner in case the vessel, as the instrument of damage, should be subjected to a lien through the negligence of those appointed by the charterer to manage her navigation?

The owner contends that this right to indemnity rests upon the general principles of the law of bailments.

The case of *Smith* v. *Bouke*, 40 Fed. Rep. 839, 49 Fed. Rep. 954, is cited in support of the proposition that a charterer of a hired

ship must pay for its loss through his fault. This rule, it is argued, must also require the charterer to pay for its damage received by collision; and if the collision, instead of injuring the hired vessel, gives rise to a lien upon her for damage to another vessel, that the charterer must logically be bound to discharge the lien; that the rule requiring the return of the vessel undamaged must also require its return without impairment to or lien upon the title. *The Alert*, 40 Fed. R. 836; *The Centurion*, 57 Fed. R. 412.

The charterer denies its liability to indemnify the owner; contending that the general principles of the law of bailments are inapplicable, since by the charter party the owner and charterer have entered into special contractual relations which preclude the owner from calling upon the charterer for indemnity for risks, and which cast the loss ultimately upon the owner.

No case has been cited as a precedent, and the lack of legal precedents, considered in connection with the testimony of witnesses of long experience, that a claim like the present by an owner against a charterer is unknown in the shipping business, raises an inquiry whether the hazards to which vessels are exposed, and the peculiar law that renders the vessel liable regardless of ownership or control, have not led owners and charterers to a different usage from that prevailing in the hiring of chattels not by their nature exposed to special hazards, and not the subject of liens imposed by the hirer and valid against the owner. If the rules in ordinary bailments have been considered by owners and charterers practical rules applicable to their business, it is remarkable that no instance can be cited in which they have been practically applied.

The parties are presumed to contract with reference to existing rules of law and known usages, and in my opinion we are required, in order to arrive at a proper construction of the charter party, to give weight to those elements that do not exist in ordinary bailments.

In the case of *French Republic* v. *World's Columbian Exposition*, 83 Fed. Rep. 109, it was said:

"The rules relating to bailments, such as the varying degrees of care required of bailees for hire, bailees for accommodation of bailor, and bailees for mutual advantage, do not, satisfactorily to one's sense of the fitness of things, exactly point out the law applicable to the

case under consideration. The relation is in many respects different in character and *in the just expectations* entertained by mankind, from the ordinary private transactions that constitute the usual bailment."

The presumption that a hired chattel will be restored uninjured, and without impairment to the value of the title, forms a part of the understanding of the parties in ordinary bailments. If a like presumption of fact exists in an ordinary case of hiring a vessel, it must be weaker in the degree that the just expectation of loss is stronger.

The weaker the presumption of a safe return, the greater the risk that was in the contemplation of the parties at the time of contracting, the stronger the inference that the contract is affected in all its provisions by the risk, and that it provides therefor.

As to the special risk in question the owner contends that the contract is silent. The charterer contends that the contract speaks expressly.

Bearing in mind the importance of the question of risk of loss, and the fact that nowhere does the contract provide in terms that the owner shall be indemnified by the charterer, or relieved from the risk of loss to which merely by the relation of owner he is exposed, and seeking for direct expressions of the intention of the parties as it existed at the time of contracting, we find the stipulation, "22. The owner shall pay for the insurance on the vessel."

Insurance has been described as "a fixed sum as the price of risk". The parties were contracting with express reference to risks capable of estimate in money. In construing the charter party we should not be confused by the fact that a large loss has occurred. What is now a loss was at the time of contracting merely a risk — the risk (as a commercial consideration) a mere money charge.

This express assumption by the owner of the cost of indemnity, I regard as a most unequivocal expression of an intention to assume and to relieve the charterer from all risks that would be covered by "the insurance on the vessel" for which the owner was to pay.

Upon the opposite view an owner who for a valuable consideration has agreed to bear the cost of indemnity may throw that cost upon the charterer, provided the risk existing at the execution of the contract subsequently matures into loss.

This is entirely inconsistent with the owner's contention that this clause, commonly employed in charters of various kinds, is used in accordance with a common scheme of dividing the "fixed charges" between the owner and charterer.

If, as argued upon the petitioner's brief, insurance is to be regarded as a fixed charge, appertaining to the vessel, according to a general practice to have vessels insured, and there is a general scheme to distribute the fixed charges pertaining to the vessel, the owner assuming some, the charterer others, then it must follow that both should share in all benefits accruing from the payment of the fixed charges upon the vessel.

Counsel for the owner contends that the fundamental fallacy in the respondent's argument lies in the assumption that because the charter shows that the owner wants insurance against his own risks, he also means to insure the charterer's risks and to assume them.

In reply to this criticism, it may be said that the owner's argument involves the fallacy of a shifting of premises and of treating the insurance, *first*, as relating to the vessel and to the joint enterprise of owner and charterer, and, *secondly*, as relating merely to the respective individual risks of owner and charterer, and that the argument involves also an assumption that the risk of a lien upon the vessel as an offending *res* is not an owner's risk that should be insured against by the owner through a policy that might be described as insurance on the vessel. The fact that a charterer may be liable *in personam* to third persons does not change the owner's risk that one injured may elect to proceed *in rem*.

As a guide to construction I adopt the view suggested by the counsel for the owner, that the parties in forming their contract regarded themselves as embarking in a joint enterprise to which, for their joint benefit, certain sums must be contributed for fixed charges or necessary expenses. These expenses were necessarily incurred that the ship might work to the profit of both owner and charterer. Among these fixed charges was "insurance on the vessel".

The owner's brief and the evidence of a general usage to insure lead to this view.

The assumption of any one of the fixed charges by either party is

an agreement to relieve the other of that expense and not to call upon him to pay that charge.

The agreement of the owner "to pay for the insurance upon the vessel" is an express agreement to assume and not to call upon the charterer to pay this expense. "To pay for the insurance upon the vessel" is to pay a sum for a purpose, — to reduce an indefinite risk of future loss to a mere present definite expense. The owner therefore contracts upon the basis of a known and definite expense. The price which the charterer pays the owner is full consideration for the expense assumed by the owner for insurance as well as for the use of the vessel. This is the legal effect of the charter party. In substance, therefore, the contract price paid by the charterer includes full repayment to the owner of the price of insurance.

As the charterer in this way has already borne the expense of insuring the vessel, has paid to the owner the price of risk, or cost of indemnity, according to the terms of the contract, the owner cannot call upon the charterer to pay it again. Especially would it be a violation of clear intention to compel the charterer to pay the cost of indemnity, when through actual loss that cost has become greatest.

The charterer having contracted on the basis of risk, and having satisfied the owner forhis risk by a money payment, has, so far as the owner is concerned, stopped the running of the risk against himself.

If the owner has observed the terms of his agreement he has obtained by the consideration that the charterer has paid him his indemnity against loss. The charterer has paid him what the contract makes the equivalent of the present loss. Upon every legal and equitable consideration, therefore, the charterer is relieved.

The remaining question is, What is included in the phrase "insurance on the vessel"?

The phrase seems broad enough to include insurance of every kind that in the expectation of the parties properly appertained to their joint enterprise.

Upon the owner's brief it is claimed:

"If the fruit company intended that the insurance clause should have the effect of giving it the benefit of the owner's insurance, presumably it would have adopted the following or an equivalent form of words."

"*The owners* * * * *shall pay for the insurance on the vessel* against all risks, including protection and indemnity and freight and demurrage club protection, giving charterers full benefit of same as if they were for the time being owners of the ship."

This, a form in practical use, is itself an example of the use of the term *the insurance on the vessel* as comprehending risks of every character, since the subsequent part of the sentence is a mere specification of what is comprehended in the previous general language. There is also testimony from the claimant's witness Gourlie tending to show that such a clause would ordinarily be held to include three quarters of a collision risk, including running down.

Furthermore it has been proved by the charterer, and is not disputed, that the actual understanding of the owner at the execution of the contract was that the phrase included insurance against risks of all kinds.

William H. Bennett, who as broker negotiated the charter for the owner and charterer, testifies as follows:

"I have had a good deal of experience in various insurance claims * * * so much so that I clearly expressed to the owner that he would have to pay for all insurance on the vessel in any way, shape and manner against stranding, collisions and everything as is usually done in all vessels, unless he wanted to take the risk and not insure."

The owner objects on the ground that this evidence is incompetent. In my opinion, however, the evidence was admissible. It did not vary, add to or contradict the writing, but only interpreted and made certain its terms. *Lonergan* v. *Buford*, 148 U. S. 581, 588.

"If the language of the document, though plain in itself, applies equally well to more objects than one, evidence may be given both of the circumstances of the case and of statements made by any party to the document as to his intentions in reference to the matter to which the document relates." 7 Am. & Eng. Enc. of Law, 93.

Many other provisions of the contract have been urged by counsel for the charterer in proof of the owner's intention to assume the insurable risks pertaining to the vessel. That the owner assumed the risk of damage to his vessel, and could not call upon the charterer to repair her or indemnify him for such loss is very clear. There are express agreements that lead to this conclusion without

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recourse to the provision concerning insurance. He is to maintain her in a state of repair, and the hire is to abate during time lost by collision.

There is great force in the argument that since the vessel, if damaged by this collision, would have immediately been at the expense of the owner for repairs, with an abatement of price during the time lost in repairs, that the parties contemplated faults in navigation and that there was a general intent to assume the risk of all consequences of collision, and no intent to make a distinction between receiving and inflicting damage.

It is clear upon the face of the charter party that the owner assumed one consequence of a collision caused by the fault of the charterer's servants and agreed to bear the expense of insuring against it, and it is fair to infer that he also contemplated the other consequence of the same fault as a proper subject for insurance.

As the whole risk was insurable, evidence of a custom to insure only three quarters does not, in my opinion, affect materially the question of intention. In considering this question I do not lose sight of the doctrine of the case of *General Mutual Ins. Co.* v. *Sherwood*, 14 How. 364, cited upon the owner's brief.

Though the loss in the present case was the result of a collision, with the added element of the negligence of the charterer's servants, yet the owner was liable to loss from such causes and could insure against it.

As the contracting parties both understood that the vessel was to be under the charge of a master who, though appointed by the charterer, was to be satisfactory to the owner, as the possible liability of the charterer to third persons for the master's fault would rest not upon the charterer's personal fault, but merely upon an imputed responsibility; as the charterer's and owner's business both required that the vessel should be set in motion, and thereby become exposed to the danger of a lien as an offending *res*, I see no reason arising from public policy why the owner and charterer should not agree between themselves as to which should bear the expense of indemnity against such an anticipated loss.

When the joint business of two persons requires the agency of a third who is to have a large sphere of independent action, not under

the personal supervision of either, I see no reason why they should not, in fixing the terms of their agreement, contemplate that this third person through negligence might cause a loss; estimate the risk at the cost of insuring against it, and fix the contract price accordingly.

It is conclusively settled in this country and in England that a policy of insurance taken out by the owner of a ship or goods covers a loss by perils of the sea or the perils insured against, although occasioned by the negligence of the master or crew or other persons employed by himself. *Phenix Ins. Co.* v. *Erie & Western Transportation Co.*, 117 U. S. 312, 323; *Orient Ins. Co.* v. *Adams*, 123 U. S. 67, 72; *Liverpool & Great Western Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397, 438; *California Ins. Co.* v. *Union Compress Co.*, 133 U. S. 387, 415.

If indemnity insurance is lawful and proper, there should arise in construing the charter party no presumption that the parties did not intend it.

In *Orient Ins. Co.* v. *Adams*, 123 U. S. 67, 72, the Court quotes *American Ins. Co.* v. *Insly*, 7 Penn. St. 223, 230.

"Public policy requires no more than that a man be not suffered to insure against his own knavery, which is not to be protected or encouraged by any means, for though the maxim *respondeat superior* is applicable to the responsibility of a master for the acts of his servants, yet the insured, so long as he acts with fidelity, is answerable neither for his servants nor for himself."

These principles are equally applicable in construing the contract between the owner and charterer.

As in this country liability attaches by law to the vessel as an offending *res*, regardless of the relations of the owner and those in control, it is natural that the parties should consider the vessel as so liable, and contract on that basis.

From the language of the charter party, and from the evidence that the phrase "insurance on the vessel" was used with an actual intention to cover what, according to its literal terms, it was capable of covering,— running down risks as well as risks of direct injury,— I am satisfied that the intention of the parties was that the owner should bear the risks of that primary liability to which his relation

as owner exposed him; and that according to the legal effect of the charter party he has received compensation for his risk from the charterer.

Having received full compensation for risks, he has likewise received full compensation for all that at the time of contracting was potentially within the risk for which he has been paid.

The petition of the Turret Steamshipping Company, Limited, against the Boston Fruit Company, is therefore dismissed with costs.

Upon the main case a decree may be entered for the libellants against the vessel for the sum of $19,475, with interest from Jan. 1, 1897, and for their costs.

UNITED STATES CIRCUIT COURT OF APPEALS

For the First Circuit.

A. G. Hall et al. *v.* the Steamship Barnstable.

Arthur W. Nunan, Petitioner, *v.* The Steamship Barnstable.

Harold Emernan et al., Administrators, Petitioners, *v.* The Steamship Barnstable and the Boston Fruit Company.

Israel B. Stewart, Administrator, Petitioner, *v.* The Steamship Barnstable and the Boston Fruit Company.

Turret Steamshipping Company, Limited, Petitioner, *v.* the Boston Fruit Company.

It appearing from the records of the Court in this case, that the claimant, the Turret Steamshipping Company, Limited, has filed a duly approved stipulation for value herein, with sureties, to abide the decree, in the sum of twenty-five thousand dollars ($25,000), an amount in excess of the final decree herein, and of the probable costs of the appeal, and that said stipulation provides that the stipulators are bound in the said sum, conditioned that the claimant shall abide by and pay the money awarded by the final decree rendered in the cause in the District Court, or, in case of appeal, by the appellate

court, as will more fully appear by reference to the said stipulation, now, on motion of the claimant, —

It is ordered that no further bond on appeal is required, and that the said stipulation to abide the decree stand as a bond for costs, and as a supersedeas on this appeal, with leave to the libellants, and to the Boston Fruit Company, however, to re-examine the sureties if desired; and, if they are found to be unsatisfactory, —

It is further ordered that the claimant shall furnish such other sureties thereon, or such further bond, as a further order of this court or of the appellate court may direct.

Dated March 25, 1898.

ARTHUR L. BROWN,
United States District Judge.

We hereby consent to the entry of the foregoing order herein.

CARVER & BLODGETT,
Proctors for Libellants and Petitioners,
RUSSELL & RUSSELL,
Proctors for the BOSTON FRUIT COMPANY.

CITATION ON APPEAL.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES, BY THE HONORABLE ARTHUR L. BROWN, UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND, DULY ASSIGNED TO HOLD THE DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS,

To A. G. HALL *et al., Libellants, against Steamship Barnstable; to* ARTHUR W. NUNAN, *Petitioner, against the Steamship Barnstable; to* HAROLD EMERNAN ET AL., *Administrators, Petitioners, against the Steamship Barnstable and Boston Fruit Company; to* ISRAEL B. STEWART, *Petitioner, against the Steamship Barnstable and the Boston Fruit Company, and to the* BOSTON FRUIT COMPANY, GREETING:

Whereas the Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, petitioner against the Boston Fruit Company, has appealed to the United States Circuit Court of Appeals, for the First Circuit, from the final decree rendered in the District Court of the United States for the District of Massachusetts, made in your favor against the said steamship Barnstable, and filed in the office of the clerk of said court on or about the seventeenth day of March, 1898, and has filed an assignment of errors and petition of appeal and supersedeas as required by law, you are therefore hereby cited to appear before the United States Circuit Court of Appeals,

at the city of Boston, on or before the twenty-first day of April, 1898, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, this twenty-fifth day of March, 1898.

ARTHUR L. BROWN,
U. S. District Judge.

CONVERS & KIRLIN,
Proctors for Appellant.

We accept service of the within citation.

BOSTON, March 26, 1898.

CARVER & BLODGETT,
Proctors for Libellants.

RUSSELL & RUSSELL,
Proctors for BOSTON FRUIT COMPANY.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

I, Frank H. Mason, Clerk of the District Court of the United States for the District of Massachusetts, certify that the foregoing is a true copy of the record and all proceedings in the cause in admiralty entitled,

No. 760.

A. G. HALL ET AL., LIBELLANTS,

v.

THE STEAMSHIP BARNSTABLE,

in said District Court determined, the opinion of the District Court of January 25, 1898, the assignment of errors and agreement of parties that no appeal bond be given, with the order of court thereon, and also the original citation issued upon the appeal of the respondent (claimant of the steamship Barnstable), with the acknowledgment of service thereon, except the exhibits (numbered 1 to 19 inclusive) which are omitted from this record, pursuant to agreement of parties filed in court March 26, 1898, an attested copy thereof being annexed hereto.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said district, this twenty-first day of April, A. D. 1898.

[SEAL] FRANK H. MASON, *Clerk.*

UNITED STATES DISTRICT COURT,

DISTRICT OF MASSACHUSETTS.

IN ADMIRALTY.

HALL ET AL.

v.

THE BARNSTABLE, *and other Petitions filed in the same case.*

STIPULATION IN REGARD TO RECORD.

It is hereby consented and agreed that the following original exhibits be transmitted by the clerk of this court to the Circuit Court of Appeals, for the use there, by either party, instead of copies thereof being inserted and printed in this record, namely: The bundle of charter parties being exhibits numbers 1–19 inclusive, enclosed in cover marked "Petitioner's Exhibits for identification."

And it is further consented that any necessary order may be made hereon, accordingly, at any time, without notice.

BOSTON, March 26, 1898.

CARVER & BLODGETT,
Proctors for Libellants.

CONVERS & KIRLIN, *Proctors for*
TURRET STEAMSHIPPING COMPANY, LTD.

RUSSELL & RUSSELL,
Proctors for BOSTON FRUIT COMPANY.

A true copy:

Attest: FRANK H. MASON,
Clerk.

103 United States Circuit Court of Appeals for the First Circuit, October Term, 1898.

THE BARNSTABLE.

TURRET STEAMSHIPPING COMPANY, LIMITED, Claimant of the Steamship Barnstable, Appellant,

v.

A. G. HALL ET AL., Late Owners of the Schooner Fortuna, Libellants; Arthur W. Nunan, Petitioner; Harold Emernan *et al.*, Administrators, *et al.*, Petitioners; Isaac B. Stewart, Administrator, Petitioner, and Boston Fruit Company, Charterer of the Steamship Barnstable, Respondent, Appellees. } No. 249.

Appeal from the district court for the district of Massachusetts.

Before Putnam, Webb, and Aldrich, JJ.

Opinion of the Court.

May 11, 1899.

WEBB, *J.*:

Little need be added to the careful opinion of the district judge in this case, which is a case of contract between the owners and the charterers of the steamship Barnstable. There can be no controversy as to the terms of the charter, for it is in writing and
104 is in evidence. The difference relates to the 22nd article of the charter, which is in these terms: "The owners shall pay for the insurance on the vessel." What are the obligations imposed by this provision of the contract?

In argument there has been some discussion concerning the mutual relations, under the charter, between the parties. The owners contend that the charterers were bailees and held to all the liability of bailees, and this contention the charterers controvert. We do not think that the determination of that question will aid in the decision of the case. For whether or not, in the full and strict sense, the charterers were bailees, they would be, independently of this insurance clause, chargeable with some of the risks of the ship, while the owners would bear others. Assumption by the owners of insurance against risks affecting themselves alone,

would be of no advantage to the charterers, who would in no event be answerable for losses arising from such risks, and had no interest in insurance against such losses.

The insertion of this clause in the charter has no meaning unless it be to make such insurance as would profit the charterers, which could only be effected by insurance against losses which would fall upon them, against all risks attaching to them. This insurance clause must have been intended for their protection, and could have been understood by them in no other way, and the agreement of the owners was not to partially but wholly to protect them, and to relieve them of the expense of insuring themselves. In effect it said to the charterers,—Your only responsibility will be to pay the hire of the ship; all other things shall be our care and at our charge. If, having so agreed, they chose to take the hazard of loss and to save the cost of a policy, they made themselves insurers, and after the loss cannot throw it upon the charterers.

The decree of the district court is affirmed with interest, and the costs of this court are adjudged to The Boston Fruit Company, appellee.

105 United States Circuit Court of Appeals for the First Circuit, October Term, 1898.

THE BARNSTABLE. No. 249.

Final Decree.

May 11, 1899.

This case came on to be heard at the October term of this court, A. D. 1898, on the transcript of the record of the district court of the United States for the district of Massachusetts and was argued by counsel.

On consideration whereof it is now, to wit, May 11, 1899, here ordered, adjudged, and decreed as follows: The decree of the district court is affirmed with interest, and the costs of this court are adjudged to The Boston Fruit Company, appellee.

By the court:

JOHN G. STETSON, *Clerk.*

106 United States Circuit Court of Appeals for the First Circuit, October Term, 1898.

THE BARNSTABLE. No. 249.

Clerk's Certificate.

I, John G. Stetson, clerk of the United States circuit court of appeals for the first circuit, certify that the printed pages numbered 1 to 102, hereto prefixed, contain and are a true copy of a transcript of record of the district court of the United States for the district of Massachusetts, the same being the entire record (except a bundle of charter-parties, being Exhibits 1 to 19, inclusive, referred to in the stipulation on page 102), upon which the cause entitled No. 249, The Barnstable, was lately heard and determined in said circuit court of appeals.

I further certify that printed pages numbered 103 to 104, hereto prefixed, contain and are a true copy of the opinion of said circuit court of appeals, in accordance with which the final decree of said court was entered on May 11, 1899.

I further certify that page numbered 105, hereto prefixed, contains and is a true copy of the final decree of said circuit court of appeals entered on May 11, 1899.

I further certify that printed pages numbered 1 to 105, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings in said cause to and including July 15, 1899, excepting that said record does not contain the bundle of charter-parties, Exhibits 1 to 19, inclusive, hereinbefore referred to, which exhibits are on file and of record in said circuit court of appeals.

In testimony whereof I hereunto set my hand and affix the seal of said United States circuit court of appeals for the first circuit, at Boston, in said first circuit, this fifteenth day of July, A. D. 1899.

[Seal United States Circuit Court of Appeals, First Circuit.]

JOHN G. STETSON, *Clerk.*

106½ [Endorsed:] File No., 17,598. U. S. C. C. of appeals, 1st circuit. Term No., 484. Turret Steamshipping Company, Limited, claimant of the steamship Barnstable, petitioner, *vs.* A. G. Hall *et al.* Filed January 3, 1900.

107 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the first circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Turret Steamshipping Company, Limited, claimant of the steamship "Barnstable," is appellant and A. G. Hall *et al.* are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the district of Massachusetts, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby
108 command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of January, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Return on Writ of Certiorari.

United States Circuit Court of Appeals for the First Circuit.

And now here the judges of the United States circuit court of appeals for the first circuit make return of this writ by annexing hereto and sending herewith a stipulation between counsel for the respective parties in the cause in the Supreme Court of the United States, wherein this writ of certiorari issued, "that the transcript of record heretofore certified to the Supreme Court by the clerk of this court and filed in the office of the clerk of the Supreme Court of the United States with the application for a writ of certiorari herein may be taken as the return to the writ issued by said Supreme Court to said circuit court of appeals under date of the 17th of January, 1900, and that this stipulation may be certified to the Supreme Court by the clerk of this court as and for the return to the said writ," and said stipulation is hereby certified accordingly.

In testimony whereof I, John G. Stetson, clerk of said United States circuit court of appeals for the first circuit, hereto set my hand and affix the seal of said court, at Boston, in said first circuit, this twenty-seventh day of January, 1900.

Seal United States Circuit Court of Appeals, First Circuit.

JOHN G. STETSON, *Clerk.*

109 United States Circuit Court of Appeals for the First Circuit.

TURRETT STEAMSHIPPING COMPANY, LIMITED, Claimant of the Steamship Barnstable, Appellant,
against
A. G. HALL ET AL., Appellees,
and against
BOSTON FRUIT COMPANY, Appellee.

It is hereby stipulated and agreed that the transcript of record heretofore certified to the Supreme Court by the clerk of this court and filed in the office of the clerk of the Supreme Court of the United States with the application for a writ of certiorari herein may be taken as the return to the writ issued by said Supreme Court to said circuit court of appeals under date of the 17th of January, 1900, and that this stipulation may be certified to the Supreme Court by the clerk of this court as and for the return to the said writ.

Dated Boston, January 27, 1900.

CARVER & BLODGETT,
Proctors for A. G. Hall et al.
RUSSELL & RUSSELL,
Proctors for Boston Fruit Co.
CONVERS & KIRLIN,
Proctors for the Turrett Steamshipping Company, Limited.

110 [Endorsed:] Supreme Court of the United States, October term, 1899. No. 484. Turret Steamshipping Co., Limited, *vs.* A. G. Hall *et al.* Writ of certiorari and return of the U. S. circuit court of appeals for the first circuit thereon.

111 [Endorsed:] File No., 17,598. Supreme Court U. S., October term, 1899. Term No., 484. Turret Steamshipping Company (Limited), &c., petitioner, *vs.* A. G. Hall *et al.* Writ of certiorari and return. Filed Jan'y 29, 1900.